

THE
SUPERIORITY
AND
DIRECT DOMINION
OF THE
Imperial CROWN
OF
ENGLAND,
OVER THE
CROWN and KINGDOM
OF
SCOTLAND,

AND THE
Divine Right of Succession to both CROWNS
Inseparable from the Civil,

ASSERTED.

In Answer to Sir Thomas Craig's Treatises of Marriage
and Succession; Occasionally detecting several material
Errors of Sir George Mackenzie and other eminent Authors.
With some account of the Antiquity, Extent, and Constitution
of the new-Born Monarchy. Explaining considerable
parts of the British, English, and Scotch Histories
and Laws.

*Levius sit assensu
Antiqua corrigere est nequa.*

Hor.

London, Printed for J. Hawley, next Door to the
King's Head Tavern in Holbourn, 1704.



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To the Right Honourable
Charles Lord Mohun;
Baron of *OAKHAMPTON.*

THIS *Island*, My Lord, which has been distinguished from the whole World, for the early embracing Christianity, the Valour of its People, the felicity of the Soyl, and excellency of its Constitutions, (unless *God's Providence*, and the *Guardian Angel*, to which he has allotted this Station, interpose,) is too likely to be mingled with the rest of the World, in those Calamities, which vex the *Continent*. The Enemies to the publick Tranquillity, (as too many such there have been within this *Island*,) have had frequent prospects of Succeed-
A 2 ing,

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ing, even to their own Ruin, in the Desolation of their Country: But, generally, the *Almighty* has raised up some *few Great Men* among us, whom he has adapted to the exigencies of the Publick.

Several such I have known, that now are Dead, and others yet Alive, whose Memories will be transmitted to Posterity, for their eminent Zeal, Services, and Abilities, in the Cause of their Country.

In the first Rank of those *Patriots*, were the two *Charles's*, *Earls of Marlesfeld*.

How well they judged and acted for the Interest of *England*, was not more visible in any thing, than in their early and strenuous Endeavours, that the *August House of Hanover*, might be comprehended within the Settlement of the *Crown*.

With the same Wisdom, that the first of our *Protestant Queens* declined

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ned naming a Successor; *King William* of Glorious Memory, chose to strengthen the security of this *Kingdom*, by causing the *House of Hanover* to be added to the Support of the *British Throne*.

Tho' many shining Qualities, had indear'd the late *Charles, Earl of Maclesfeld*, to that best Judge of Men; his *Lordship's* acquitting himself so perfectly well, upon that *Embassy*, may be thought to have made our late *King*, the more sensibly, to express Himself, that by, that *Earl's Death*, he lost one of his best *Friends*.

In which, the loss to the Publick, would have been irreparable, if we could not Justly apply that of the *Prince of Poets*,

— *Uno avulso non deficit alter*

Aureus —

One Golden Branch being off, another Springs.

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Your Lordship, to the satisfaction of all, who Value the Memory of the *Earl of Maclesfeld*, was made *Heir ex affe*, according to the expression in the Civil-Law, in which an *Adopted Heir*, is as fully and truly *Heir*, as one Born so.

As *W. I.* was made *Heir* to the *Confessor*, your Lordship was to the *Earl of Maclesfeld*; whose desire in the *Codicill* annexed to his Will, that your Lordship would take care of the *Protestant Religion*, and the interest of *England*; was not from any doubt, but an Expression of a well grounded Assurance, and a Testimony, that your Lordship's eminence in the Cause of your Country, (the Love of which, had in him, the Ascendent over every other Passion) was the real inducement, to his so free and noble Gift.

Tho' 'tis God's Pleasure, that some Men, to manifest his Power, and the

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the intrinsic value of Truth, and an admirable Constitution of Government, should be carried, as it were by a *Divine Impulse*, still to go on in that Cause, with an obstinacy, not to be cured, by all which the World thinks Calamitous; yet, for encouragement, and examples to them, who thus labour up the Hill, he leads some as it were with a *Pillar of fire*, and sets them out with all the Advantages, which give reputation to Virtue.

Such Virtue, I mean, as may well be thought above what engrosses the Name of *Moral*. For that *Piety*, which engages Men to venture all for their Country, as it comes from God, pursues *revealed*, as well as *natural Religion*.

The Marks of God's Favour upon this account, are often the more conspicuous, when, by the influence of his *Holy Spirit*, he has

A 4 drawn

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drawn a great Mind, from a vain pursuit after false Pleasures, to the delightful View of a well established Renown, and a foretast of ineffable Glories in a future State.

To recommend such Examples, and make them the more amiable, he adds the Goods of this Life, when they may be trusted, in the Hands of a *Steward*, who will apply them to those uses, by which they attain the greatest Happiness on this side Eternity.

Vid. His.
Answer to
Hobbs,

This Happiness, *Christian Philosophers*, and particularly the Learned *Bishop Cumberland*, prove to consist in doing good to Mankind. Nor did the *Heathens* want this Notion, when they formed the *Maxim*,

The more common the Good is, 'tis so much the better.

The

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The Goodness of *Great Men*, to particular Persons, is limited to narrow Bounds, in comparison with that, which extends to *Constitutions* of *Governments*, by which more than can fall within the largest knowledge, and opportunities, receive benefits, the Sense of which, like that of the *Sun*, and *common Air*, is lost by the diffusion, and continuance.

Private Persons of lower Stations, may amidst the sharpest Tryals, reap Satisfaction, in the inward Testimony of their Sincerity, and the assurance, that they aim at a general Good.

But the disadvantages they lye under, as they depretiate their Services; allow them, but a small share of that sublime Pleasure, which flows in upon *Great Men*, of *your Lordship's* Capacity, and Spirit.

The

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The Cause of *publick Liberty*, that is, the maintaining the best of *Constitutions*, which secures it, your *Lordship* has as an *Heir-loom*, in the same Sense that a *Noble Man's Arms* were, in the old *British* and *Saxon* Law. These a Man could not part with, but they were to go to the *Heir* of his Estate.

This *Heir-loom* of the *Public*, which that true Lover of his Country left your *Lordship*, is but a proper accession, to what your *Lordship* is known to derive from your *Ancestors*.

From your *Grand-father* by the *Mother's* side, the *Earl of Anglesey*, who Laid the Foundation of his unequalld knowledg of our *Constitution*, and ability for the *State*, in the Study of the Law; and from your *Father*, whose Love to *legal Liberty*, and Courage in asserting it, occasion'd his much lamented
Death;

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Death ; your *Lordship* derives so happy a *Composition*, as makes the hopes of *English Men* rise, with your *Lordship's* growing Fame.

Nor is there any Man more in their Eye, for assisting them, in maintaining the Rights of the *Imperial Crown* of this Kingdom,

Tam Marte quam Mercurio.

If the present Question should come to be matter of *publick Debate*, and for want of a right understanding go farther ; this Nation must needs be glad, to find the Abilities of that matchless *Statesman*, the *Earl of Anglesey*, in the Inheritor of your *Father's* Valour and Estate, with the addition of the *Earl of Maclesfeld's*.

Gra-

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Gratitude to the Memory of *King William*, to whom the *House of Hanover* owe their immediate Interest in the *Succession*, in the same Sense that *William*; falsely called the *Conqueror*, had this *Crown* of the Gift of *Edward the Confessor*; and Justice to that of both the *Charles's*, Earls of *Maclesfeld*, whose warmth in this, as in all matters of near concern to their *Country*, made their Characters the more Exalted; might be sufficient to put me upon drawing together what has occurred to me, of that Right of the *Imperial Crown of England*, which takes from the *Scots* all occasions, or pretences, for reviving antient *Feuds*, about the Right of Succession to their *Crown*.

I know not whether 'tis allowable for one, who may be thought to discredit his *Ancestors*, to add as a prevailing Consideration, that
my

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my Great Grand-father * Sir Peter * Md. lic
 Young, of Setoun in Scotland, was Scriptum
 Embassador to the Court of Den- reliquit in
 mark, to conclude that Treaty Suâ Ephe-
 of Marriage, from whence we meri ad
 have the Blessing of Her present diem 15m.
 Majesty's Reign, and assurance, Aug. Hic
 that late Posterity shall not la- dies natal.
 ment the want of a Protestant fuit Petri
 Descendent from that Marriage Junij de
 to sit upon the Throne of Great Setoun e-
 Britain, questris
 Ordinis,
 Sapientis-
 simo Prin-
 cipi Jac.
 vi. Mag-
 næ Brit.
 &c. Regi,
 à primâ
 infantia,

pueritiâ, & adolescentiâ a studijs, postea a consilijs, & varijs le-
 gationibus ad externos Reges & Principes, nec non ab Eleemosy-
 nis, Natus est Taoduni in Angusiâ, servivit Regi suo ac Domi-
 no Clementissimo 34 annos & menses 11. ac dies 11, summâ
 cum fide ac integritate, teste conscientia, ac testibus omnibus pro-
 bis qui eum in Aulâ noverint, ac Omnipotentis Numine guber-
 nante, famulor. Regionum qui adhuc sunt superstites, diutur-
 nitate facile primus, &c.

— Sic parvis componere magna So-
 lebam.

Permit me to tell your Lordship,
 we both derive from Embassadors,
 some incitement to unalterable
 Zeal

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Zeal, for the *Protestant Succession* to the *Crown of England*.

The *Subserviency* to which, in an *Homage* to the *Earl of Macclesfeld*, has a sort of *Feudal Claim* to your *Lordship's Protection*.

The *Right* of this *Imperial Crown* to *Homage*, for the *Kingdom of Scotland*; considering the unforced consequence of it, is a Subject worthy of a better Pen: Yet my endeavours may, possibly, meet with the more favourable reception, as they explain the nature of this ancient *hereditary Monarchy*; restore to several of our *Monarchs*, those due *Honours*, of which they have been defrauded by the *Moderns*; and vindicate the injured *Memories* of *William I.* and *William III.* from the imputations of being *Usurpers*, or acting as *Conquerors*.

Nor is the occasion of such a *Vindication* over, when, from the *Supposition*

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position that *W. I.* acquired an indefensible right to himself, and the next of his Line, in a constant course of Successions, and that *W. III.* had no Right; Enemies to the publick Peace, who take all to be well if there be but *Union among themselves*, represent her Majesty, only as a Trustee for Her putative Brother.

Tho' Bishop Sanderson's Construction of the great Rule, *the safety of the People is the supream Law*, is not universally true; it must be agreed to be so now. For the interest of all the Subjects of this Monarchy, is bound up in our most excellent Queen; who truly, and rightfully, Succeeds our last King, in unbyass'd intentions for the Happiness of all her Subjects, and of all the habitable World.

In her Majesty we see Sir *W. Temple's* Idea of the most perfect Form of Government, verified; which, like

Nota, he makes it always to lie in the safety of the Prince
Sand. de oblig. con. scientia.

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like a *Pyramid*, has the largest *Base*, but touches Heaven in an indivisible Point.

As your *Lordship* has signalized your self, among the rest of that *Noble Body*, who with the Acclamations of all the good People of *England*, make the best Court to such a *Queen*, by following her Wise Precepts, and bright Example; I doubt not but your *Lordship* will make large Allowances, for an hasty Zeal in the same Cause; and will pardon a tedious Apology, for taking this opportunity of publicly professing that Esteem, and Obligation, with which I am,

My Lord,

Your *Lordship's* most faithfully

Devoted humble Servant,

W. Atwood.

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*The Superiority, and Direct Do-
minion, of the Imperial Crown
of England, over the King-
dom of Scotland, &c.*

HAVING the * Blood of a considerable ^{Vid.}
Family in Scotland, mingled with an Malmeth
Hereditary Zeal for the *Constitution* off. 53. Egd
the *British Monarchy*, it may be less ^{quia utris}
strange that I should be the first of the Moderns, ^{usq; gen-}
in ascribing to my Countrymen of both King- ^{is langui-}
doms, the Honour of being under one *Imperial* ^{nem trahd}
Crown, continued to the present *Royal Family* ^{cale tem-}
thro a *British Channel*, not only of *consanguinity*, ^{peramen-}
but of Laws. ^{tum Set-}
^{rabo, &c.}

The form of an Act is printed as having passed
the *Lords and Commons* of the *Parliament of Scot-*
land, to authorize the *States* of that *Parliament*,
to nominate and declare the Successor to the
Imperial Crown of that *Realm*.

Which Epithet I conceive was never before,
except in an Act to establish a *Divine Right* in a
Popish Successor, applied to that *Crown*; tho the
Crown of England, as I shall shew, was duly pos-
sessed of such a title long before the *reputed Con-*
quest.

Imperial, I take not only to imply an Inde-
pendency from any *Kingdom or Prind*, but Superio-

^{Vid: 5r G.}
^{M's right}
^{of the Sda}
^{cession de-}
^{sende, p.}
^{43 No dis-}
^{ference in}
^{Religion, no}
^{Law nor}
^{All of Par-}
^{liament}
^{made or}
^{to be}
^{made call}
^{erty alters De-}

city over some other *Crown* or *Principality*. Which sometimes, as will appear, may have been *Feudal*, only because of *Protection*, without relation to any grant of the *Fee*.

Thus when *Wales*, which was never given the *British Kings* or *Princes*, by any *Saxon* or *Norman King*, came into the more immediate Government of *England*, *E. 1.* says, *Wales* was before subject to him by *Feudal Rights*.

Davis's
Rep. f.
41. 6.
Prius no-
bis jure
feodali
Subjecta.

To proceed with the *Scotch* intended Act, it adds, after mentioning the nomination of a Successor to their supposed *Imperial Crown*.

' Provided, that the same be not the Successor to the *Crown* of *England*, unless there be such conditions of Government settled and enacted, as may secure the Honour and Sovereignty of this *Crown* and *Kingdom*, the Freedom, Frequency, and Power of *Parliaments*; the Religion, Liberty and Trade of the Nation, from *English*, or any *Foreign Influence*.

'Tis further declared,

' That it shall not be in the power of the meeting of *States*, to name the Successor to the *Imperial Crown* of that Realm, nor shall the Person be capable to be King or Queen of both *Realms*, unless a free Communication of Trade, the freedom of Navigation, and the liberty of the *Plantations*, be fully agreed, by the *Parliament* and *Kingdom* of *England*.

Not to meddle with the *Politics*, of which my Superiors are the proper Judges, and may in due time determine for the good of both Nations; I cannot, but think it my duty to lay before them part of that evidence, which may be thought, rather than the force of Arms, to have induced the brave

brave Nation, which now possesses *Scotland*, as well as their Predecessors *Picts* and *Britons*, both Princes and People, not only in Words, but in notoriety of Facts, to have acknowledged the Superiority, and direct Dominion of the Crown of *England* over all the parts, which have fallen under the denomination of the *Kingdom of Scotland*; in testimony of which their Kings have paid homage both Feudal and Liege, and the People have sworn Allegiance to our Kings.

When this shall have appeared beyond possibility of being fairly denied, I cannot but hope that the Love of Truth, and the Common Interest of both Nations, will persuade my Countrymen and Fellow Denizens, of *Scotland* to admit of the only consequence of *Homage*, of present use to the Crown of *England*; and as I shall shew of great moment to all who have, or expect that they or their Relations shall inherit Lands in *England*; and this so far from being to the dishonour of the *Scottish* Nation, that instead of their being at any time hereafter under a Feudatory Prince, it may secure to them a more immediate relation to the head of the *British* Monarchy; if some great Calamity to both Nations do not divide them. As it has been for the Honour of the *Scotts*, that their King has been King of *England*, if thereby *Scotland* became more fully fixed, as a Flower in the Imperial Crown of *England*, surely they should not think it more for their Honour, again to have Kings so truly their Creatures, as to be made and unmade at their pleasures; which their Kings evidently were, not only in the fabulous Reigns 300 Years before our Saviour, but in the times of which our Historians have furnished them with an account.

If while they had distinct Kings of their own, they were Liege Homagers to our Kings, and but *Subreguli* or Viceroyes under them, that by the Accession of their *James* the 6th to the Throne of *England*, the right of their Crown devolved upon the Crown of *England*, and became annexed to it, and that thereby, whoever duly succeeds to this Crown, will be *ipse facto* King or Queen of *Scotland*, as I shall shew follows undeniably from the *Feudal Law*; is confessed by their own Writers; and was foreseen and adjudged by *Henry* the 7th and his Council, when he disposed of his Daughter *Margaret* to their *James* the 4th.

That the Kingdom of *England*, as well as the Crown is interested in this controversy; I have the judgment of a wise Parliament before the time of any one of the *Scotch* Historians of their side.

For, upon the Pope's admonishing *E. 1.* to desist from the exercise of his direct Dominion over *Scotland*, which the Pope claim'd as a Fee of *Holy Church*; the Parliament declared this tender to be the disherison of the Right of the Crown, the Right of which they were bound by their Oaths to defend, and they neither would, nor ought to permit the King to quit that right, if he would.

And this will appear to have been the judgment of another wise Parliament near 250 years after that of *E. 1.* yet our *Moderns* not only give this up, but plainly suppose *E. 1.* and his Parliament, to have been guilty of the grossest fraud imaginable, when they solemnly assured the Pope, that from the most Ancient times; 'the very first Institution or erection of a Kingdom here, as well in the times of the Britons

An.
1301.
29.
Vid. Inf.

' the *Saxons* downwards, the Kings of this Kingdom of *England*, were over the Kings and Kingdom of *Scotland*, in right of Superiority and direct Dominion.

This the Lords and Commons affirmed that they knew.

The King shewed, that in consequence of this our Kings had in several Ages successively, received *Liege Homages and Oaths of Fidelity* from those Kings, for the Kingdom of *Scotland*, and from what Peers of the Kingdom they thought fit.

It must be owned, that a late diligent Historian has denied, that Homage was done for the Kingdom of *Scotland* before *Henry 2ds* time; and our *Historiographer* having caused a Charter of *Malcolm King of Scots*, testifying his having done Homage for his Kingdom to *Edward the Confessor*, to be engraven; My Worthy and Learned Friend, Mr. *Tyrrel*, distrusting an Ancient Writer, whose Authority he receives for every thing else, furnished Mr. *Ridpath* with his main objection against that Charter; from what Authors less to be credited in that particular, say, concerning *Malcolm's* Marriage with *Margaret*, who is mentioned as advising and consenting to that Charter. Mr. *Ridpath* having learned such a supposed uncontrollable evidence of its Forgery, tho at the best 'tis an averment against a Record, disallowed by Reason, as well as by our Law; takes this occasion to Translate and Publish a Book of *Sir Thomas Craig's*, who was content with the reputation he had got by his Book of *Feuds*, without Publishing his invective against our *Hollinshead*; for doing the part of a faithful *English* Historian, in relation to one of the principal Flowers of

the Crown; in which he had the ingenuity to own he was assisted by a *Lawyer*, whom *Sir Thomas*, according to the Liberty he might take in a Writing, fit only to be handed about among his own *Countrymen*, reprobachfully calls *Petty-fogger*.

Perhaps it will appear, that for want of knowledge in the Common Law of *England*, some eminent Writers have mistaken the plainest and most remarkable passages in our Histories; and on the other side Men of great name in the Law, and memory of what they find reported in Law Books, know little of the true grounds of the most solemn Judgments, relating to Publick and Private Inheritances.

And while they condemn all enquirers into Records and Histories, for Studies so chargeable, and remote from gain; render themselves no otherwise fit Subjects for History than in respect to their great Estates, got by what a Writer of no mean Reputation calls, the *Miscenary part of the Law*.

Vld. Platonem redivum.

CHAP. II.

Sir Thomas Craig's quotations against himself, of two Eminent Foreign Writers. They shewn Competent Judges. His censure of the British and English Antiquities. A short comparison of the Authorities on both sides.

2. 3. & 4. **S**ir Thomas Craig says, he should have slighted what *Hollinshed* mentions very often in the Body of his History, of the Kings of *Scotland* having

ving paid Homage to the King of England, if Bodin had not fallen into that same errour, as he calls it, by reading the English Histories; for he writes, 'that the Kings of Scots did formerly acknowledge the Kings of England as their Liege Lord.

Bodin, as is well known, was a French Author, whose Authority has been cited by many, as the Standard for Notions of Government, and the Rights of the several Kingdoms which fell under his consideration. He was a Lawyer, a Native of Angiers, of whom it is writ, that his application to Learning made him poor in all things but Reputation. He dyed in the year 1585. the 17th of Queen Elizabeth.

Bodinus
de Repub-
lica lib. 1
c. 1.

Vid. Uni-
versal
Dict. ed.
An. 1602.

Sir Thomas Craig adds,

'And Bernard Gerard, a Modern French Historian in Philippo, 1 lib. 7. asserts that Scotland is a Foe Liege of England, altho' the Scots do at this time deny it.

This is meant of the time of his Writing, nor that it was questioned but agreed in the time of Philip the first, who as he succeeded his Father H. 1. in the year 1060. was contemporary with our Edward the Confessor.

These are no mean testimonies, considering the reputation of the Authors, and that they were of a Nation concerned to flatter the Scots, and which had so large a share in the Publick Transactions between England and Scotland, that Bodin, and particularly Gerard, who writ an exact and admirable History of his own Country, could not but be fully apprized of the Authorities insisted on by the English, and barely denied by the Scots, since they first set up for Allies to France; which, as it made use of the Scots to di-

vert the force of *England* from prosecuting the right of that Crown to the Kingdom of *France*, would have readily embraced them as *Allies*; were they not aware of the dangerous consequence, of insisting upon the right of any such Alliance, to derogate from the known right of *Homage*.

That this was so known in *France*, and every where throughout *Europe*, where it happen'd to be considered, is put past a possibility of reply by our learned *Historiographer*, in his demonstrative refutation of the fictitious League between *Charlemain*, and an imaginary *Scottish King* within *Britain*, while there could be no such King but in *Ireland*; as will appear before I have done with this subject.

Our *Historiographer* having mentioned the League between *John Baliol* and *Philip the Beau*, King of *France*, says,

Second Lett
p. 12.

'Sometime after a Peace is negotiated betwixt *France* and *England*. And now the main difficulty was, whether *John Baliol* and his Subjects were comprehended in the word *Allies* of *France*.

Vid. inf.
E. 1.

'*King Edward* maintained that *John Baliol* was his *Vassal*, and therefore was incapable, and could make no *Alliance*.

'The *King of France*, the *Pope* and his *Cardinals* (all employed in the Treaty) gave up the point to *King Edward*.

'An expedient was agreed to, that *King Edward* should grant a truce or abstinence of War to the *Scots*, at the prayer and request of *King Philip*, not as an *Ally* of the *Scots*, but as their *Friend* and *Interposer*; who takes himself no way at all to be allied to them. *Ala priere & ala requeste de mesme*

*mesme le Roy de France, come a amy, & amiable
Compositeur, & Nemie come a Allie a ceux d'Escoce,
Mais come a celuy que de ryens se tyent Allie a
eux.*

This was not only a sufficient Warrant for Bodin and Gerard to hold, the one that Scotland was a Fee Liege of England, the other that the King of the Scots acknowledged the King of England as their Liege Lord; but shews it to have been the uncorrupted judgment of the Pope, whose Authority is urged for their independency, and even of the King of France; who would have been glad of any shadow of a pretence, to treat with the Kings of Scotland, as Allies and independent Princes.

As to our English History Sir T. C. says, 'most sir T. C. of what we find in it before the Conquest is p. 34. 'vain and trifling, and almost all of it uncertain, 'except what is writ by the Roman Historians, 'and Gildas or Bede.

Yet he soon contradicts himself, and adds, p. 39. *Ethelward*, who, he says, flourished about 1090. but did above 100 years before: The fragment of *Ingulpb*, he will not allow to be an History; and is positive, knowing no better, that *Asserius Menevensis* wrote only concerning the Transactions of King *Alfred*.

This he takes to be all the light we have since Bede; owns, indeed, that *Florence of Worcester* (whom he places about the year 1148, whereas he dyed in the year 1119. which was the 19th of H. 1. and except that he was an English Monk, is lyable to none of the objections made by Sir Thomas Craig against the English Historians says, 'he sa T. C. had 'left things to posterity, either as he found 'them in the text of the English Chronicles, or as he

‘ he had them from the relations of Men worthy
 ‘ of Credit, or heard and *saw them himself*.

‘ As to what concerns the Text of the *English*
 ‘ *Chronicles*, Sir *Thomas* will have it, that *Florence*
 ‘ mentions them, that he may *deceive his Reader*
 ‘ *with the greater facility*; for, says he, if there
 ‘ was any Chronicle of those times, seeing *Flo-*
 ‘ *rence* lived about the year 1148. they must still
 ‘ remain in the *Archives*, which hitherto no
 ‘ *English* Author did ever alledge, or hath been able
 ‘ to demonstrate, for that Chronicle did only set
 ‘ down the number of years.

As Sir *Thomas* is full of Errors, in all his at-
 tempts to give any account of our *English* Anti-
 quities, here he fails in several particulars.

1. In supposing that *Florence* lived and writ
 about the year 1148. which is a mistake of 29
 years, as he mistook above 100 years concerning
 the time of *Ethelwerd*.

2. Tho’ he would seem to argue, that no such
 Chronicle as *Florence* cites, remains in our *Archives*,
 he admits there was one; but then as appears,
 having never seen it, or concealing what he
 could not but have observed, if he had seen it, he
 would have it thought to be so imperfect, as
 to set down *nothing but the number of years*. I shall
 often have occasion to shew much more out of it;
 but it may be sufficient here to produce an unde-
 niable evidence, that *Florence* corrected *Bede* by
 the *Saxon Chronicle*, and that we have now the
 very same Chronicle which he made use of.

In the year 672. according to the *Dionysian* ac-
 count he has this passage.

Kenwalchius Rex West-Saxonum 30 anno Regni sui defunctus est. Huius uxor Sexburga Regina secundum Anglicam Chronicam uno post illum regnavit Anno. Secundum vero Bedam subreguli regnum inter se divisum annis circiter decem tenuerunt.

Kenwalch, King of Flor. the West Saxons, died in the 30th year of his Reign, His Wife Queen Sexburg, according to the English Chronicle Reigned one year after him. But according to Bede under Kings, held the Kingdom divided among them about ten years.

The Saxon Chronicle of this very year says, An. 671. *Her forth-ferde Cenwalh King & Seaxburh, heald an gear rice his Cwen aefter him.*

3. Besides, what appears by comparing Florence with the Saxon Chronicle; 'tis plainly, this Monk of Worcester, to whom Gemeticensis of the time of H. I. or King Stephen, attests, that he was an English man by Birth, venerable for his Manners and Learning: in those things which he added to the Chronicles of Marianus Scotus of King Wm. and of Transactions under him, or under his Sons, the Kings Wm. and Henry, he honestly produced them.

Then after an account of Marianus, returning to the Monk of Worcester, he adds,

Solertior itaq; perscrutatus veteribus & Modernis codicibus Chronographicis edidit, &c.

Therefore the Ancient and Modern Books of Chronology, being diligently searched, he publish'd his.

Sir

Sir Thomas Craig would be thought to believe, that the *Monk of Worcester*, is the very first that can be produced, who writ of the *Homage and Fealty* for the Kingdom of *Scotland*; which if he were, being of a time not in the least to be suspected, and when he could not but have had full information, his Testimony could not reasonably be objected against; and yet there will appear such plenty of other Authorities, that it must be agreed there is no need of using his.

p. 45.

As to the nature of all the Evidence, Sir Thomas supposes it chargeable with 3 faults. 1. That 'tis Monkish. 2. Domestic. 3. The Testimony of one Enemy against another, as the times then were.

The last objection is struck off, by observing the true times when the *Monk of Worcester* and *Ethelwerd* writ, and if *Ethelwerd* prove a full authority against the *Scots*, that will remove the first objection; as Sir Thomas himself has confounded the 2d, in giving the Testimonies of *Bodin* and *Gerard*, and occasioning further evidence from *France*.

Na he' was
of the Sax-
on Blood
Royal and
Queffer or
Treasurer to
King Ed-
gar, or else
to the then
Duke of
Flanders,
to whose
Duchess
his Cousin, he
dedicates
his Book.
p. 42.

The course of the Authorities which I shall produce, in confirmation of the Testimony of the Antient Friends of *Scotland*, the *French*, will make it evident, that Sir T. C. was either very little acquainted with the merits of the Cause, or endeavour'd to conceal them; and yet himself has admitted Authorities sufficient to convince all who do not wilfully shut their eyes.

He tells us, 'the Scope of the whole is this, 'that there's no perfect nor authentick *English* History, and that there's no authority nor certain proof as to matters of moment before H. the 1st's time, when Authors began to commit Publick Transactions to Writing, except *Gildas*, *Bede* and *Ethelwerd*.

How

How far this Character will agree with what I shall produce, the World will judge, and I believe I might refer it to the decision of some, who have strenuously held, that there never was Homage done to the Crown of England for the Kingdom of Scotland, before the Reign of H. 2d.

A very Learned Gentleman, who has given considerable light to the *English History*, being of this opinion, I may the rather entreat him to apply his own quotation out of *Fordon*, for the further credit to what I shall produce.

Fordon in his Prologue to the *Scotch History* says.

‘He had heard it was very well ordered in England, that every Monastery of Royal Foundation should have its particular Writer, who was Chronologically to set down all the memorable things, which hapned in each King’s Reign, either in their own or neighbouring Kingdoms; and that at the next great Council, after the death of every respective King, each of those Chronographers met there, and produced whatsoever they had so remarked, and that some of the most discreet persons in the said Council, who were best skilled in such matters, being chosen for that purpose, should examine these Memorials, and by comparing them together, should extract a brief Chronicle from them all, which was to be preserved in the Libraries of those Monasteries as Authentick Annals to be relied on by posterity, that so the remembrance of those Publick Affairs, might not be lost or devoured by the rust of time.

Whoever observes the exact agreement in the main, and in the very expressions in the several Registers, and how our Historians have, by one of the wisest of our Kings and his Parliament, been

Prof. to
Mr. Tyr-
rel, 1 vol.
of the En-
glish Histo-
ry, f. 21.

been appealed to as Authentick Records, cannot doubt of the truth of *Fordon's* observation: and here is the testimony of the *Father* of the *Scotch* Historians, that whatever can be produced from our *Registers* before his time, is to be rely'd on, not as the evidence of *Monks*, but of Committees of *English* Parliaments.

And yet I am well aware with what prejudice every thing of this kind which I shall offer, is likely to be entertained by Men, who will fancy even Charters, concurring with Histories of, and nearest the Times, to be Forged; when it may be evident there was no manner of occasion for any such forgery: and yet as I shall shew, they swallow the grossest fictions, of which no footsteps ever appeared till the moment of their late production, and contrary not only to their own Historians, but to Records of both Kingdoms.

If we compare Historian with Historian, ours will appear, some of the very Times; others early and exact Transcribers of what was register'd by Men who knew the facts. Some of which Authorities are unwarily received by Men, who oppose what themselves exhibit, and the most considerable passages are confirmed by Charters, and other undoubted Records and documents as the *Scots* call them. On the other side, except *Peremund* and *Cornelius* of *Ireland*, no where to be found but in the Romance of *Hector Boethius* and in his Followers, and except *Marianus Scotus*, born in the year 1018. (whose *Chronicle* is of sufficient Antiquity, and undeniable Evidence of the right of the Crown of *England*, the *Scots* cannot pretend to any one Historian extant, older than their *Fordon*, who Writ in the

Scotch
Hist. Lib.
p. 71. 75.
Vid. Gor.
donem de
Stralagh
de illis.
Nemo vi.
vie qui li.
tum vide-
re, de hoc
nunquid
superste
dubito

14th Century after Christ ; unless they take in the *Compiler or Compilers* of the *Register* of the *Abby of Mailross*, within that which now obtains the name of *Scotland*.

But it will appear, that they will be very loath to do this, without very gross interpolations ; That *Register* not only shewing that the *Scots* have been so far from holding the Succession of their *Kings Sacred*, that they used to make themselves Lords over the Lives of those truly humane Creatures, and if they called them *Gods*, forced them to *dye like Men* ; but, as the Beings of their *Kings* were by themselves rendred precarious, they thought it no diminution to the Honour of those *Nominal Kings*, nor of their *Superiour States* of the *Realm*, to do *Homage*, and *Swear Allegiance*, to the head of the *British Monarchy*.

The pretence, that this was only for *Lands* held within the present bounds of the Kingdom of *England*, as it is founded only upon the affirmations and qualifications of the fact, by their *Historians*, the earliest of which was *Fordon* ; it will appear, that all the *Scots* who now oppose the *Right* of the *Crown of England*, will and must reject all their own *Historians*, *Fordon* himself not excepted, in matters of the greatest consequence and notoriety, within his own time and observation.

These things, as they might have been obvious to any Body, who in the least attends to what he reads, it may seem unaccountable how our *Moderns*, and particularly a Learned *Bishop*, should think the most fully attested Truths of the *Right* of the *Crown of England* *fables* ; and *fables* of late invention, the Authors of which every man may point at, the most undeniable truths.

OF

Of this since I doubt not, but I shall satisfy the most scrupulous, I may hope for pardon in being a little free with an Episcopal Authority; especially since I not only assert the right of the *Crown of England*, according to the Duty of my *Allegiance*; but of the *Metropolitanical See of Canterbury*.

CHAP. III.

The Heads undertaken to be made good. The Bishop of Carlisle's account of Sir T. C's Book concerning Homage, with short Remarks.

TO set the Controversy in a true light,
1. I shall give the other side the advantage of an *English Prelate's* Testimony for them; but shall make some short remarks to take off from that Authority.

2. Shall shew, that the admired *Advocate* for the *Scotch Independency*, ignorantly hit upon the right Question, but departed from it, not understanding the terms of his own Question.

3. Shall make it evident, that *Homage* merely *Fendall* was so early in *England*, that his objection from the supposed Novelty even of that *Homage* (which will not concern the question of *Liege Homage*) will appear groundless.

4. Shall set the *Scotch Advocate* to give a full answer to all his own *negative conjectural arguments*, and shall support that answer with the *Suffrages* of their *Bishop Lesley*, *Embassadour* here in *Queen*

Elizabeth

Elizabeth's time ; and fully informed upon what ground the *English Lawyers*, and Learned Men maintained that *Homage* was due.

5. Shall shew, that what is now called *Scotland*, was within the *British Monarchy*.

6. That upon, and after the Translation of the *Monarchy* to the *Saxons* and *Danes*, and during that Period of time ; the *Scots* were Subjects of it, their Kings paid *Liege Homage* for the *Kingdom*, and both they and their Subjects Swore *Allegiance*.

7. That this *Homage* and Subjection was fully transferred to our *Kings* of the *Norman Race* ; and acknowledged and evidenced by *Notoriety of facts*.

8. That the *Scots*, from within the *British times* downwards, were not only under the *Crown* of *England*, by reason of *Allegiance* to the persons of our *Monarchs*, but to the *Laws* of the *Kingdom*. Wherein I shall shew, that the true point in *Calvin's case* 7^o Jac. 1. and the legal consequence of it was then mistaken or drop'd ; and that, according to the last Judgment in Point, in Conformity to more Ancient Authorities, *Scotland* is of right within the *Allegiance* of the *Crown* of *England*.

9. That the Subjection evidenced by *Liege Homage*, is still due to the *Crown* of *England*.

10. That her present Majesty is possess'd of the *Imperial Crown* of this Realm, with its appendages ; by *Divine Right*, not to be distinguished from the *Civil*.

11. That her Majesty is rightfully seized of the *Inheritance* of the *Crowns* of *England* and *Scotland*, to her and her *Heirs* and *Successors*, according to the *English Act of Settlement*.

C

12. That

12. That the *Scotch Nation* are bound in Honour, and for their own Interest, and that of *Europe*, as well as in the right of the Thing; to comply with the just and happy Consequence of their having from of old, been *Subjects* and *Homagers* to this *Monarchy*.

(a) Bishop
of Car-
lisle's
Scotch
Hist. Libr.
p. 276.

How this agrees with
acknowledging the
Laws of
Malcolm
the 2d to
be Authent-
ic I cannot see.

(b) p. 277.
p. 378.

Scotch
Hist. Lib.
p. 278.

1. The present *Bishop of Carlisle*, tho himself had made a very (a) material objection against Sir *Thomas Craig's* notion of the *Fudal Law*, thinks fit to receive him as an Oracle upon our present question.

'There's, (b) says he, another elaborate Treatise of the same Author's compofure, which bears the short title *de hominis*, proving that the *Kings of Scotland* never paid, nor owed any Homage to those of *England*.

Having censured our *Historiographer*, for publishing *Malcolm's* Charter of Homage for the Kingdom of *Scotland*; he adds,

'Which Mr *Ridpath* the Translator of Sir *T. Craig's* Book, has deservedly exposed, and convicted of notorious and undeniable marks of Forgery. To prevent any Calumny that might hereafter be raised of the like kind, it was thought convenient to publish this Book in the *English Tongue*, that the Subjects of both Kingdoms might discern on what equal Terms their Ancestors stood. The Author proves that Homage, and Liege Feud were not known in this part of the World before the days of *Charles the Great*, nor was there any King in *England* big enough to demand any such thing before *Egbert*. The Testimonies which our *Historians* give of the matter, ought (as he thinks) to be rejected, as being *Monkish, Domestic, and Partial*. Having abundantly shewn, that the Realm of *Scotland* could not

'possibly be held a *Fee* in *Vassalage* under *England*,
'because of the constant enmity of the Nations,
'the rest of his pains (in convincing us that nei-
'ther the Ancient Britons, Saxons, or Normans,
'were ever such *Superiour* Lords of that Kingdom,
'as our Men have pretended) might have been
'spared.

His Lordship may pardon my observing,

1. That he is so very favourable to the *Scotch* Ne-
gative, as to suppose *Sir T. C.* had proved, that
the *Kings* of *Scotland* never had paid nor owed any
Homage to those of *England*: whereas *Sir T.* and
all their Authors own, that *Homage* was both due
and paid; but they have pretended it was for
Lands in *England*, which being taken from them,
they argue that the ground of the *Homage*
falls.

2. Whereas his *Lordship* supposes it prov'd,
that *Homage* and *Liege Fees* were not known in
his part of the World, before the days of *Charles*
the Great, with whom the *Scots* will have it that
they made * a League about the year 791, it will
appear by what follows, that we had such *Fees*
here before that time; and tho his *Lordship* might
not think, that the Laws of composing an *Hi-*
storical Library, would have obliged him to take
notice where a favourite Author contradicts, and
in effect renounces a fundamental Proposition;
his *Lordship* would not have been so much assur'd
of *Sir T. C.*'s being in the right, in his Notion of
the late introduction of the *Feudal Law* here, if his
Lordship had observed, that after *Dr Brady* had
form'd a killing Argument of a Conquest in his
positive assertion, that *W. 1.* brought the *Feudal*
Law hither, and thereby made a total change of
the old *Saxon Property*; he, or one of his Assist-

* *Vld. Mr*
Rimer's
Detection
of that
Forgery, &c
Letter to
the Bishop
of Carlisle
p. 2, &c.

Vid. his
Appendix
to the 1st
part of his
Gumptions
Hist. where
he gives up
the contro-
versy with
W. A.

ants, whose pains he had as unluckily used in translating and pointing King John's Charter; has, in an elaborate discourse, knocked all on the head, by proving all manner of Tenures, and other incidents to the *Fudal Law*, to have been here in the time of the Saxons.

If his Lordship could not recollect what might have been at a distance when he writ; it might be thought his great Judgment, and Application in other matters, would have led him to observe, that the admired Sir T. G. receives such Authorities, as demonstrate the Superiority of the Crown of England over the Kingdom of Scotland. For where Authorities are received, and the only question is about the sense of them, the true sense is as capable of demonstration, as any proposition in *Euclid*; and such Authorities will appear on this Subject.

Vid. The
English
Hist. Lib.

Vid. Dr
Brady's
compleat
History.

4. His Lordship having formerly given Dr Brady the advantage of his Eulogy, as a prejudice against the Writings of such weak opposers as myself; I may with the greater Freedom beg his Lordship to read Dr Brady a little more carefully to see whether there was not often a *Rex primus* first or chief King, before King Egbert, big enough to receive Homage for the Kingdom of Scotland.

5. I may recommend to his Lordship, the reading the fam'd Ecclesiastical Historian Bede besides others; and submit it to his Lordship's second thoughts, whether the quarrels between the Nations have been so constant, as to give colour to the imagination, that the Realm of Scotland could not possibly be a Fee under England.

CHAR

C H A P. IV.

The true Question. Sir T. C's. mistake of his own Terms.

THE Dispute is not about Words, but things; and therefore 'tis not about *Feudal Terms*, with which this controversy has been perplexed of late; but whether the *Kings* of that part, which has long gone by the name of *England*, have a truly *Imperial Crown* in respect to *Scotland*; whether that be within this *Empire*; and whether the *Prince and People* of those parts, which now pass for *Scotland*, have from the first erection of the *Monarchy* here, or since, been under any bond of *Fidelity* or *Allegiance*, to maintain the *Peace and Dignity* of the *Crown of this Kingdom*. The attending to this *Question*, and the *Evidences* to prove it, confess'd by the other side, might make this controversy very short; but since the *World* is apt to swallow whatever is confidently affirmed, by *Men of Reputation* for *Learning*; one who pretends to no share of that *Reputation*, is under the greater necessity of encountering assertions, with *Proofs*, and to give heaps of 'em, to remove the suspicion, that might lye upon any single *Witness*.

I may be thought a bold Man to affirm, *S. Hist. L. p. 277.* that the *Learned Bishop* did not attend, to *Sir T. Craig's* state of the *Question*; and that *Sir T.* did not understand the *Terms*. 'Tis plain he did not contend, as the *Bishop* supposes, that the *Kings* of *Scotland* never paid, nor owed any *Homage* to those of *England*, but his state of the *Question* is,

De homi- Whether the Kingdom of Scotland be a Fee
nio c. 2. Liege of the Kingdom of England, and whether
Sir T. C. the King of Scotland owes, or ever did pay Ho-
State of the mage to the King of England upon that account.
Question.

Vid. 7. Here one would think by his putting the Que-
rep. f. 7. in stion, that he was appriz'd of the known distincti-
Calvin's on between *Feudal* and *Liege Homage*; the first of
case. which was according to the *Feudal Law*, due by
 reason of a *Feud*; the other by the *Law of Super-*
riority and Subjection, Prior to Feudal Right.

Sir T. C. *Homage*, Sir Thomas thus defines, *Homage* is a
def. of Ho- *Profession* which the *Vassal* is obliged to make un-
mage, p. 11. to his Lord by *Oath*, upon the account of some
 'benefit received.

p. 12. By a *Benefit*, he shews, that he means a *Fee*.
 Those things are *relatives*, and the one cannot be
 without the other, I mean, says he, a *Fee* or
Benefit and *Homage*.

He neglects what he had observed from the
p. 13. Practice and *Etymology*; which, as he owns, is
 the *action* and *profession* of a *Man*, and is no other
 than a *Man's* professing himself to be his Lords
Man, and promising to perform his *Military*
Service faithfully when required, and sometimes
 also when he is not required.

After such a state of the Question, and observa-
 tion of the usage and *Etymology* of *Homage*, it
 might have been thought impossible for him to
 groap in perfect darkness, as if he had not been
 acquainted with the first rudiments of the *Feudal*
Law.

Thro this he values himself for differing from
 most Learned Men.

Sir T. C. 'I know, says he, that most Learned Men are
p. 13. 'of a different opinion, and distinguish *Homage*
 'from *Falty* thus, that the former is transacted
 'with

with more veneration than the latter, that so they may make the Oath of Homage distinct from that of Fealty; and they require two Oaths, whereas there is only one needful in Law; but by their leave, I make bold to say it is not so, for there was only one Oath, the form of which was twofold in Law.

But *cum pace tanti viri*, form makes essence: and an Oath or Oaths of two forms must be two Oaths. Had he but the good luck to hit upon the difference between manner and form, he would not so long have puzzled his Head about this Matter; especially, if he had attended to what needs no more to be proved than first principles, that (a) ^{(a) 1 Inst. f. 64.} Feudal Homage, of which he makes the Question, was never Sworn, and therefore; was perform'd by (b) ^{(b) 1b. f. 65.} Infants; which Fealty never was. Because of the Oath there, Fealty was said to be Sworn, and Homage done.

It will appear plainly by our Feudal Law, which must determine all disputes here about Feuds, that Homage was due upon the account of protection only, as well as for a Feud or Fee, received from the Person, to whom the Homage was performed.

But all that Feudal Homage which was done to Subjects, was ever with a *Salvo* for the Fidelity which the Party owed the King; and therefore, if at any time the King took Homage only, he might require the Oath of Allegiance of every one within his Dominions, at the Age of 12 as some hold, of 14 as others; which is but suitable to what the Law requires between Subject and Subject, for Fealty is an inseparable incident to Homage.

But then the Homage to the King was always a profession of Subjection and Allegiance; according to the form of the Homage of the Temporal

Vid. Lib.
Rub. in
Seaccar c.
55. & Lit.
Sect. 83.
1 Inst. f.
150.

Glossary
p. 196.
Cap. 7. p.
19.

ral Lords, to be seen in Sir H. Spelman's Glossary, ' I N. N. become your *Liege Man* of Life and Limb, and of Earthly Worship; and Faith, and Truth, I shall bear unto you, to live and dye against all manner of Folk, So God me help.

Tho Sir T. C. has mistaken both the Nature of *Homage*, and for what it was due; he raises, as he fancies, a noble Structure upon this Foundation, and thinks to prove his Negative from the nature of a *Few* or *Fee*; for, says he, ' by the Feudal Law it is not possible that *Scotland* can be a *Few* of *England*, or that ever the King of *Scotland* could be a *Vassal* thereof, or the King of *England* his *Superior*. For a *Fee* comes from the Lord, and is wholly owing to his Liberality and Bounty, who settles some part of his Patrimony upon his *Vassal* or faithful Servant.

Now if protection may be a cause of *Homage*, or there may have been *subjection* before the notion of *feudal Homage* obtained, all this will appear to be besides the Question. However, Sir T. C. going upon the supposition that the *Superiority* claimed by the Crown of *England*, was merely *feudal*; 'tis of mighty service to him to suppose, that *England* has been a *Conquered Nation* (the contrary to which I shall here sufficiently shew, and may live to prove at large) and he will have it, that *Homage* could never have been here before the time of *H. 1.* who, as he fancies, brought in the *Feudal Law*, and that it so far obtained, that the *English* at present are governed by no other than the *Norman Law*.

Some learned Men of our Nation, and all who servily Copy after others, without examining into the Grounds of random general assertions, having run into this error, supported by the Au-
thor

authority of no less a Man than Sir H. Spelman,
 (whose bigotry I may say, if the posthumous
 Works in his Name are genuine, blinded his o-
 therwise exact Judgment in all points of Learn-
 ing) it cannot be thought a Digression to pro-
 duce some of those many evidences of the use of
 the *Feudal Law* here, and the Nature of it in the
Saxon times, which may not only shew it far from
 improbable, that our Kings should exact from
 the Kings of the *Scots*, such *Homage* as was known
 in the *Feudal Law*; but that in this, as in other
 particulars, *W. 1.* did no more than assert the
 Ancient Right of the Crown: and in maintain-
 ing the *Feudal Law* here, with its incidents, he
 was a true defender of the *old English Laws*, ac-
 cording to his Coronation Oath: Of which,
 I can make appear, he was a careful obser-
 ver in the main; the greatest Severities which
 the *Monks* lay to his charge, having been with
 the consent of the Nation, gladly concurring
 with him, to abate the Power of the *Romish*
Clergy, who had then a third part of the Nation
 within their *Fends*.

C H A P. V.

*Of the Feudal Law here in the Saxon Times,
 particularly Homage, and the Nature of
 it. Several entries in Domes-day Book,
 shewing Sir Thomas Craig's gross mistakes,
 and disproving the supposition from the use
 of that Law, that W. 1. was a Conqueror.*

L *egal Homage*, as the Lord Coke observes, is due: *Inst. 8.*
 to the King only, because he is sovereign
 over all; and as *Bracton*, a Learned Judge in the
 Reign of *Henry the 3d* has it,

Sola

*Soli Regi debetur sive
Dominio sive servitio.*

Is due to the King
alone, whether in De-
measns or Service.

This, according to a distinction in use long before the reputed Conquest, as indubitable Charters of Ancient Kings evince, may be explained by In-land, which was in the Lords hands, or taken care of by his *Præpositus* or *Bayliff*, and comprehended all within the same *Fend* or *Fee*, tho the Service of the Feudal Tenants were never so free, and *outland*, which, if not always, at least sometimes was wholly separated from the *Fee* of the Lords *Demeasns*; which, whatever some think had *Military Tenants*, as well as *Socagers*, so annexed to the *Fee*, that they could not free themselves and their *Lands* from it, without particular Licence from the Lord of the *Fee*. But others whose Estates were *outland*, or only in *Service* rendered Services sometimes only to the person of a *Great Lord*; and the King himself had some Tenants, who, tho there was no Lord between did not hold of his Person or Crown, but of some *Honour* which had come to the *Crown*; and those services to the *Honour* were not merged, or altered to *Tenure* in *chief*, but continued as services to the *Honour*: which was a *Tainland* or *Barony*, granted out from the *Crown*, for ought appears, from the first division of *Lands* here. The *Tains*, or *Barons* themselves, held in *chief* of the King's Person or *Crown*: they sometimes granted away part of their *Fee* so freely, that it was lawful for the Tenants *in quo voluerunt* to go whither they would, as we see in *Domesday Book* giving an account of the *Lands* and *Tenures*.

Vld. Mag.
Chart. 2.
31.

E. in the time of *Edward the Confessor*, and the ancient Customs of *Cities and Boroughs*.

They who might go whither they would, are then said to go whither they would with their Land; not that they could carry away their Land with them; but part with it, or put themselves and their Land under the protection of whom they pleased. This was *commendare se*, to recommend or submit themselves to such a *Protection*: and the Person who had thus recommended or submitted himself was called *commendatus*. Some of them are said to hold only *commendatione*, which Word was used Synonymously with *Homage*.

This is the reason of the distinction of the great and less *Tenants in chief*; and in *Domes-day Book* we find *Tenants in chief*, of very small parcels of Land.

'Twould be too long a digression from the principal subject of this *Treatise*, to give those numerous instances, which may shew how Sir *Henry Spelman* and other Learned Men, have blundered in their Notions of the *Feudal Law*, or want of carefully perusing *Domes-day Book*.

I shall only touch upon the proof that we had *Homage* here both in substance, and in terms in the *Saxon times*; that this did not necessarily infer the *Homager* to be within the immediate *Fee* of the *King or Lord*, to whom he did *Homage*; that not only this, but all the other incidents to *Tenure* were here in those times; and that *W. I.* was so far from altering the *Tenures*, that the very *Estates* to which they related, remained to *Saxon Proprietors* in their former plight; some, part of great Fees, others separated from them, the owners of which did *Homage* for the sake of *Protection*; but owed no other service than *Homage quo*.

Vid. Jur.
Anglor;
ab Anti-
image quo.

mage implied. Till there be occasion for further proof of what I have here observed, the following entries in *Domesday Book*, with some short strictures, may be sufficient.

To begin with the County where I was born

Writtle.

Essex Littera Domesday Book Hund de Clemeres fort Chelmsford, Writtelam Writtle.

** The first Earl Eustace was here in the Confessor's time, whose Sister he married. He was Earl of Beolign which was then an English Honour.*

This was in the Crown in H. 3d's time.

Vid. Mag. Chart. c. 31.

*Ingelricus præoccupavit 2 hidas de terra præpositi Haroldi reddentes omnes consuetudines huic Manerio Scilicet xlii. lib. postquam Rex venit in Angliam, & tenet Comes * Eustachius ideo quod Antecessor ejus inde fuit Seiftrus.*

Here 'tis observable,

1. That *Writtle* is *Ancient Domesday*, which Harold coming to the Crown kept in *Domesday*, and occupied by his Bayliff.

2. That *Ingelric*, who was a *Sanon* here before the time of *W. 1.* possessed himself of Land which was in that King's own *Adannor*.

3. That this was unduly, 'twas not restored to the Crown; but to Earl *Eustace*, who was settled here in the *Confessor's* Time; and that because his Ancestor was seized. So that King *W.* restored

a *Sanon* Proprietor, land which the possessor, of the Crown had unduely seized.

Further of the same Manor.

X Hid. dedit Haroldus Cuidam pro suis. S. Hundred nescit si dederit libere

Harold gave 10 Hides to one for his. But the Hundred does not know

Ingelric intruded upon two Hides of Land of *Harold's* Bayliff, yielding all Customs to the Manor, viz. 12 l. after that the King came into England, and now Earl *Eustace* holds it, because his Ancestor was seized of it.

in elemosina quia mo-
tenet R. Episcopus He-
fordiensis,

whether he gave it to
hold freely, or in *Franc-*
almoign, because now
R. Bishop of Hereford
holds it.

Tho Harold was truly an *Usurper*, not being
of the *Royal Family*, nor Crowned with a *Natio-*
al Consent; yet, as he was *Dominus pro tempore* of a
Mannor in the Crown, his grant was held good/
Further yet in *Tendring Hundred*.

Hic M. pertinebat
R. E. Berenita de 4
Hid. quam invasi Engel-
icus idem tenet Comes En-
achinus Pertinebant ad-
ue 21 Soc. tenentes, 1 Hid.
1. Virg. & 3 Acres
habet Rogerus de
Lamin pro escanglo ut di-
it, & inde vocat libera-
rem Suannum.

To this Mannor there
appertained one *Berry*,
or *Mesnalty*, of 4 Hides,
which *Engelric* had by
disseisin. *Earl Bussace*
holds it. There have
belonged to it to this
time 21 *Soemen* hold-
ing 1 Hide and 3 yard
Lands and 3 Acres,
whom *Roger Bows* has
by *Exchange*, as he says,
and for that vouches
Swain, who gave him
Seisin.

I may observe here,

1. That the 21 *Soemen* held so little Land, that
certainly was, as it had been rated in the *Hidage*;
and therefore some Land which did Knights ser-
vice, *nunquam fuit hidata*, was never *hidated* or *Vld. Demid*
reckoned by Hides; and some tho the Hides it day Book
contained are mentioned, is expressly said to be throughout,
valued at fewer Hides, by reason of such service.

2. The

1. The present possessor of the *Berry*, who is most probable, was a *Saxon*, had it upon *Saxon Title*, an *Exchange* executed by *Livery*.

3. Which is most remarkable; the *Livery* was according to the *Saxon usage*, by the *Sheriff*, and that *Sheriff* was an *old Saxon*, who upon some account was for a time at least * deprived of the *Office*; but when the *Survey* was made, was very great *Proprietor*.

* *Little*
D. f. 1. 6.
Suenus
inde ab-
stulit
postquam
perdidit
Vice co-
mitatum.
Ib. f. 98.

This was *Swane* of *Essex*, Son of *Robert*, the Son of *Wimare*, by Inheritance from whom the Son seems to have been *Sheriff*.

For I find this memorable Entry under the hand of *Grime* the *Bayliff*.

In Burn habet Grimus
2 hidas in quibus erat. 1.
Car & 2 Serv &c. de
istis 2 Hidis est una de
hominibus foris factis er-
ga Regem post adventum
Regis; addidit Grimus
ad suam aliam terram,
per Robertum fil. Wimare,
Vice comitem sicut ipse
G. dicit.

In *Bury*, *Grime* has
Hides, in which there
was 1 *Plough* and 2 *Serv-*
vants, one of those
Hides belonged to *Me-*
forfeited to the *King*
since the King's coming
Grime added it to his
other Land, by *Robert*
the Son of *Wimare*,
Sheriff. As *Grime* him-
self says.

Here the *King's Bayliff* had the possession of a former *Proprietor's Estate*, but this was so far from shewing a right of *Conquest*, that tho' the Man had forfeited, the *King's Bayliff* could not pretend to justify the Possession; but as the Land was delivered in execution by the *Sheriff*. Had the entry been in the right of War, what need of vouching this *Civil Officer* to warrant it?

Of this Robert and his Son *Suene* or *Suane*; I find his memorable entry in the *Hundred of Angra*, *Ongar Hundred*, now called *Ongar*. *L. D. f.*

47. 6.

Staplefort tenet Siricus de Saeno, quod tenuit Godricus pro uno Manerio & v. Hidis dedit suis n. lib. Hominibus libere i. v. Hidas & i retinuit in Dominio & postquam Rex advenit Domo Regis tenuit Rob. i hid. & Suenum filium adjunxit i. v. hidas cum ista post mortem patris sui.

Staplefort Siric holds of Suene, Godric held it for 1 Manor, and for 5 Hides, and of these 5 Hides he gave to his 10 freemen freely 4 Hides; 1 he retained in Demeasn, and after the King came hither, Robert held 1 of the Kings grant, and Suene his Son joyned the 4 Hides with that, after the Death of his Father.

1. Here were 5 Hides which made a *Vir*, out of which Godric, according to his power to make a *Maner* (which was frequently in the times of the Saxons newly erected) granted 4 parts in 5 of his *Demeasn* to hold freely, which, at least most likely to have been by *Knights Service*; the Lands so granted out were *Outland*, in contradistinction to the *Inland* kept in *Demeasn*.

2. Godric seems to have forfeited his *Demeasn*, that being come to the *King*; upon which he granted it out to the great *Saxon Lord*, Robert the Son of *Wimarc*.

3. Which way soever the *King* came to that Hide of *Inland*, this did not draw more with than the *Seignior* over the *Outland*; for tho *Suene* afterwards came to be owner of those 4 Hides;

Hides; he had not them by descent from his Father, to whom *W. 1.* had granted the *Inland*; but *Sweno* himself joyned that by his own Act; which must have been either by *disseisin*, or by lawful purchase. The last of which is to be believed as he is agreed to be the true owner of all the *Hides*.

Of the Manor of *Tolesberry* in *Turstable* hundred 'tis enter'd.

L. D.

Odo homo Suani accepit a acras qui fuerunt de ecclesia & bund. hoc testatur s. inde vocat Dominum suum ad Tutorem

Odo homager to Suani took 16 Acres which were of the fee of the Church, and the hundred witnesses this. But he calls, or vouches his Lord to Warrant it.

Here was warranty, defence or protection, by reason of his being *Swane's Man*, that is his *Homager*; so Anciently *Homage* tho' not *Ancestry* was held to carry warranty. This Patron or Proprietor whom *Odo* chose, was not one of the reputed Conqueror's Followers, but an old *Sauve Proprietor*.

Of the like Nature is the following entry.

Ran. Piperellus calumpniatur dim. hid. & xviii ac. quæ jacent eccles. M. hujus & dim. ecclesie. Ingelricus non fuit saisitus S. Comes Eustachius dedit cuidam Militi unde revocat eum ad defensorem & xxx ac quæ red-

Ranulf Piperel claimed half an Hide and 18 Acres, which joyn to the Church of the Mannor and half the Church. Ingelric was not seiz'd, but Earl Eustace gave it to a certain Soldier, or one who held by Military

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*2. 1
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*3. 1
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for his*

*Tha
pears
Camolo
there.*

*In M
dim. H
& Gu
bac terr
Sol. de
facit ad
Burgens
balum
navem
de*

Service; upon which account he calls on him for Defender, or vouches him to warrant it. He also claims 30 Acres, which paid 12 pence a year to the Ancestor of Ranulf Pipere. The Hundred witnesses it.

Here,

1. The dispute about the right to the Manner, and half the Court, or of the Advowson, as appendant to the Manner was between old Barons, at least such as were settled here in the Baron Times.

2. Barons had Knights, or Tenants by Military Service under them.

3. This Service carried Homage, and required Protection, or Defence in the Lord, as well as it was an obligation upon the Tenants to fight for him.

That Military Tenures were very Ancient, appears by the Custom of the famous Roman Colony, Camolodunum, Maldon, and particular Tenants there.

In Melduna tenuit Rob. dim. H. M. tot. Suenus & Gunerius de eo. In hac terra habet Rex iv. Sol. de consuetudine & facit adiutorium cum alijs Burgensibus inuenire caballum in exercitu & ad navem faciend. Ceteras

In Meldune, Robert held half an Hide: L. D. f. 48.
Now Suene holds it, and Gunere of him, In this the King has 4 s. Customs, and it joyns with the other Burghesses in finding an Horse in the Army, and building a Ship;

able, but the other v. *consuetudines habet*
Suenus, semper i Bor. &
 Customs *Suenus* has there *i Car. & valet m.*
 were always i *Bordar,*
 and i *Plongb,* and 'tis *fol.*
 worth 10 s.

* One is
 supply the
 Table with
 Corn, &c.

Here the 10 s. it was worth, seems to be be-
 yond reprises, to the owner *Suenus*, who held
 of *Suenus*. His Tenant *Suenus* was obliged
 to perform or contribute towards Military Ser-
 vice, in such a manner as our *Militia* is now
 composed; but 'tis manifest, that this venerable
Borough, (which a noted *Scotch Romancer* affirms
 to have been once in their hands) held by
Knights Service, or was bound to perform it;
 and *Suenus*, as I take it, was Lord not only of *Gn-*
mere, but of the whole *Borough*.

* Vid. *Don-*
chium, &
Burchan
contra-
eam.

However, 'tis enough, that this old *Saxon*
 had a Tenant obliged to perform Military Ser-
 vice, along with the *Burgeses* of *Maldon*.

Whether *Suenus* was Lord of *Maldon* or no,
 'tis certain he was of the Honour of *Rageny* or
Ragbly, in the Neighbourhood; of which Honour
 'tis probable that *Maldon* held.

I find in *Rockford Hundred*,

Rageneia tenet Suenus
in dominio. In hoc M.
fecit Suenus suum castel-
lum, &c.

Suenus holds *Rageny*
 in *Demeasfn*. In this
 manor *Suenus* built his
 Castle.

* Vid.
 Chart. Ed.
 Conf. ubi
 Rob. fil.
 Wimar
 subscribit
 staltre id.
 est, ut vi-
 detur He-
 retochius.

This Honour, and the *Sherifwic*, if not *Earldom*
 of *Essex*, was enjoyed from under an old *Saxon*
Title, till within the Reign of *H. 1.* when it
 came to the Crown by the Attainder of *Henry*
 of *Essex*, the Son of *Suenus*, who was at the
 time of the Survey, Lord of the *Hundred* of

(a) *Rock-*

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(a) *Rockford*, as belonging to his Honour of (a) *L. B. Raleigh*, for I find he had 100 l. of the Pleas of *L. B. 115. 6* the Hundred, and as I reckoned them, he continued all the Reign of the reputed Conqueror, Lord *Nahten* of 52 Hundreds, half Hundreds and Mannors, in that one County of *Essex*, besides several Mannors elsewhere.

As I take it after the Attainder of *Henry the son of Duins*, a Writ was directed to (b) *Alberic* (c) *Bib. Aubrey de Vere*, to cause the County of *Essex*, Col. Carti to sit upon the Land of one *Alestan* then in dis- Canon- tute. Whether this was to him as sheriff, or as *Paulth* Earl, or rather as Chief Justice, I need not here en- West. Sub-quire. *Earl*, or rather as Chief Justice, I need not here en- *Earl*, or rather as Chief Justice, I need not here en- *Earl*, or rather as Chief Justice, I need not here en-

To proceed, of *Lachestadam* in the Hundred of *Hund. de Denm. f. 38 6.*

Lachestadam tenuit Wismarus, T. R. E. & M. Valet L. lib. ut di- ant Franci & Angli.

De hac terra tenuit i. c. T. R. E. vii. ac 3 mid. quæ sunt addite sic M. T. R. W. & non addiderunt consuetudi- on Regis.

Wisemar held *Lachestadam* in the time of King *Edward*, now 'tis worth 50 l. as the French and English say.

Of this Land i *Socman* in the time of King *Edward* held 7 Acres and $\frac{1}{2}$, which were added to this Mannor in the time of King *W.* and yielded not the Kings Custom.

Not to enquire whether the Kings Custom was service in the War, or any other Duty, or Pre- tation, 'tis observable.

1. That Land, which in the time of the Con- for, seemed to hold immediately of the Crown, least was within no Mannor; as it is to be ssumed on the free choice of the owner, for

the sake of protection, was then lately brought to be within that *Manor*.

Which is more considerable, and demonstration against one of Dr Brady's wild assertions, that for above 100 years after the first 5 years of *W. 1.* all the *Hundredors* were *Normans*; these *Hundredors* who certify the value, were a *Jury*, or rather Members of the *Hundred Court*, made up of *French* and *English*.

Hingford Hundred.

Roingus tenuit Colemanus. T. R. E. pro iii. virg. M. Ric. pro tantumdem in Dominio; et iste fuit ita liber quod posset ire quo vellet cum Socia & Sacra. S. tamen fuit homo Wisgari Antecessoris Ric.

Coleman held Roingus in the time of King Edward for 3 yard Land. Now Richard holds it in Demeasn for the same number; and he was so free, that he could go whither he would with the Soc. and Sac. but yet he was Homager to Wisgar, Richard's Antecessor.

Tho I will agree, that by *Antecessor*, sometimes no more is meant, than the owner of the *Manor*, before the then Lord; there's no reason here to make any difference, since the right of the last Lord, is founded in the right of him that went before. But where the former Lord was a *Saxon*, as *Wisgar* was, the word is more properly rendred as I here use it.

The *Soc* and *Sac*, as the *Confessor's* Law shews, was jurisdiction in Civil Actions, the 1st of which relates to *real*, and mixed with the realty; the other to *Personal*, and imply a Court Baron.

So that *Wisgar's* Homager had a Court Baron of his own, while he was Homager to *Wisgar*.

he had Liberty put his *Maner* under the Lord of another *Fee*,

This Man held by Knight's Service, as appears not only by his being an *Homager*, but as his *Manor* was rated to the *Hidage* but as 3 *yard Lands*.

To consider 2 Entries together, under the Land of *Gosfrid de Magnavilla* in *Lincolndun Hundred*.

Tetiam tenet G. in Dominio quod tenuit Aluricus, T. R. E. &c. Ibi fuerant iii. lib. homines tenentes xl. ac. S. non fuerunt de illo Man. quod G. habet S. ipse revocat libertorem. In Ongar Hundred. Senliam tenet Rainoldus de G. q. tenuit Levedai pro M. & 30. ac non fuit de feudo Ansgari sed tantum fuit homo suus.

Gosfrid holds Tetia in Demeasn, which Aluric held in the time of King Edw. There were 3 Freeman holding 40 ac. But they were not of that Manor, which G. has, but he vouches the Person, who delivered them. In Ongar Hundred Rainold holds Senli of G. which Levedai held for a Master and 80 Ac. and he was not of Ansgar's Feud, but was only his man.

It may be observed upon these.

1. That *Gosfrid de Magnavill* claimed the Services of these men by purchase, and vouches the party to warrant, who made them over.

2. That the word *Feud* or *Fie* was not used in relation to a new acquisition, since the coming in of *W. 1.* but this was the *Feud* of *Ansgar* an old *Baron*.

3. The whole Hundred of *Ongar* called *Angra*, had manifestly been his *Fee*, and had its name from him. *Levedai* or *Lovedai*, a name

known in that Country, tho he was not then within *Ansgar's Fee*, yet was his *Homager*.

That the owner of this *Fund* was an old *Saxon* appears by the following Entry.

Legram tenuit Ansgarus, de R. E. &c. Istud quoq; M. dedit Esgerus Haroldo & Haroldus iterum dedit cuidam suo Huscarlo nomine Scalpino & iste Scalpinus dedit ux. sua in dote videlicet duobus hominibus scil. Rogero Marescallo & quodam Anglico, & hoc testatur Hundm. quod audierunt recognoscere Scalpino & postquam R. venit in hanc ter. tenuit ipse donec ivit ubi mortuus fuit in Ebroica in ut legaria.

Ansgar held Legra, of R. E, and that Manor Esger gave Harold, and Harold again gave it to a certain Huscarl of his call'd Scalpin, and that Scalpin gave it his Wife in Dower, in the presence of Rog. Marshall, and a certain English Man. And this the Hundred witnesses, that it heard attested for Scalpin, and after the King came into this Land, he held it till he went to York, where he died in Outlary,

Here *Ansgar* and *Esger* seem but different readings of the same Name, and tho a certain *Englishman* is mentioned, as if *Marshal* were a *Frenchman*; 'tis plainly no otherwise than as the name of the *Englishman* was not known, but distinguished from the *French*, who joyned with the *English* in the *Hundred Court*.

But to wave this for greater matter,

1. Here was plainly *Dower* at the *Church-door*, and this right was allowed to continue the *Woman's* interest, notwithstanding the *Forfeiture* of this *Man*, who was one of them that held out *York* against *W 1.* the *Siege* of which all *Historians* of the time mention.

2. Till *Scalpin* was *Outlaw'd* for *High Treason* in *Rebelling* against the *King*, before that time actually *Crowned*; he was allowed to have a good *Title*, and to have been rightfully possessed of this *Manner*.

3. This *Scalpin*, who continued in quiet possession till that *Forfeiture*, was an *Huscarle* to the *Usurper Harold*; that is, as it were easily shewn one that owed him *Military Service*; but yet, as appears, had not assisted him against *King Wm.*

L. D. F.
60. 6.

In *Laxenduna tenuit in Luttin* held in *Colun*
Laxendune Luttinus *Colun* 40 ac. now *R.* holds it,
40 ac. *M. tenet & ibi* and is there in this
est in hac terra *Ante-* Land. His Ancestor had
cessor ejus habuit nullam no Custom but Com-
consuetudinem nisi com- mendation,
mendationem.

This was one of the *Colns*, where either 40 Acres of Land were held by *Homage* only, or which is more probable, the *Manor* was rated but at 40 Acres, and all who held of it were *Homagers*, that is *Tenants by Military Service*.

Of the *Mannor of Berneffuna*, and 2 others 'tis Enter'd.

Hec 3 *M. praecepit*
R. per Rob. de Oileio ut
Hugo teneret de Goisfrido
de magnavilla si ipse pos-
set ea deracionari ad su-
um feudum & antequam
G. deracionavit ea perti-
neret suo Feudo, Hugo ea
tenuit de Goisfrido.

These *Mannors* the *Nathis was*
King by Rob. & Oly *Boniton*
required that Hugh should *near Dun-*
hold of Goisfrid de Mag- *now, for*
navill; if he could de- *it was in*
raign them to his Fee, *Witham*
or Feud and before G. de *Hundred.*
raign'd them to apper-
tain to his Feud, Hugh
held them of Goisfrid.

This great Lord appears to have been a *Tenant* in *Chief*, holding an *Ancient Barony* in that

County, which coming to the Crown, was granted to him. The Lord of those 3 Mannors would not own that they were part of that Feud, or within the Barony; and therefore Goufrid took out a Writ to have the matter tryed. It seems Hugh being conscious that they were within that Barony, would not stand Tryal; but freely came and did Homage or Swore Fealty, where, by he acknowledged himself to hold of Goufrid; which, as appears, that powerful Lord drove him to no otherwise, than by applying for a legal method to have the right determined.

I find another Entry to the like purpose, concerning this Baron.

L. D. f.
61.

In Munchala tenet quidam Anglicus de G. 3 vng. quas tenuit liber homo T. R. E. & T. R. W. effectus est homo G. Ipse sua & dicunt homines Goufr. quod postea Rex concessit G. pro escangio sed neque ipse homo nec hundred testimonium G. perhibent.

In Munchall a certain Englishman holds 3 yard Lands, which a free man held in the time of King Edward; he became Goufrid's man of his own accord, and Goufrid's men say, that afterwards the King granted him to Goufrid in exchange; but neither the Man nor the Hundred bear Testimony for Goufrid.

Here this Englishman, who derived under a Freeholder of the time of the Confessor, had of his own accord, put himself under the protection of Goufrid; for which he did him Homage. This did not satisfy Goufrid, but tho he was not within his Feud or Barony, he would have it, that he had been a Tenant of one of the King's Mannors, and was added to Goufrid's Barony in exchange for one he had given the King.

But
but the
still was
In P
Fair
roldus
marus T
15 ac.
E. dequ
saisvrit
dum G.

This
Saxon,
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This
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Unde
find.

But this claim is opposed not only by the Man, but the whole *Hundred*, who adjudge, that he still was no more than an *Homager* to *Gosfrid*.

In *Piperels Barony* I find,

L. D. f.

73. 6.

Fairstedam tenet Turoldeus quod tenuit Bricmarus T. R. E. &c. Et. 15 ac. ibi jacebant T. R. E. de quibus Saiswallus de Saisvrit & jacent ad feudum G. de Magnavilla.

Turolde holds *Fairsted*, which *Bricmar* held in *King Edward's* time. And there lay 15 Acres in *King Edward's* time, of which *Saiswall* disfeised, and they lie to the *Feud* of *Gosfrid de Magnavill*.

This *Turolde* or *Thorold*, who was an *Ancient Saxon*, is adjudged at least to be the Lord of him, who held those 15 Acres, the owner of which appears not to have been so free, that he could go whither he would with his Land; and therefore *Saiswall*, who was certainly *Bayliff* to *G. de Magnavill*, was held to have brought that Land within *Gosfrid's Barony* by *Disseisin*.

Wm de Waren is taken to be a *Norman Baron*, which tho I much doubt, I may observe this Entry concerning him, within the *Barony* of *John* the Son of *Waleram*, who was an old *Saxon*.

Maplestedam tenet Osmundus de Johanne & tunc Molquam modo tenet W. de Garenda pro vadimonio.

Osmund holds *Maplested* of *John*, and then there was one Mill, which *Wm de Garend*, or *Waren*, holds in *Mortgage*.

This *Wm de Garend* held not absolutely, but a right of redemption upon paying the Money lent by *Garend*, remained to the *Saxon Proprietor*.

Under the Land of *Tibell Brito* or the *Briton* find.

Ger-

L. D. f.
81. 6.

Gerdelai tenuerunt 11
lib, hoos T. R. E. pro
Mauerio hoc tenet Serlade
Tibello hanc ter. reclamation
Tibellus de dono Regis.

Two Freeman held
Gerdelai, T. R. E. for
Mannor. This Serle holds
of Tibell, this Land Ti-
bel claims of the Kings
grant.

Serle an old Saxon, whose Family continues to
this day in Essex, held the Mannor within Tibell
Barony. Tibell, indeed claimed the property of
the Land, as part of his *Despach* within the Kings
original grant to him, or rather his Investiture
by Livery. Notwithstanding which claim, Serle
continued to hold freely of him; and seems to
have been no more than an Homager.

'Twere endless to cite all the confirmations of
what I have affirmed, in relation to Tenures in
the Saxon Times; without any alteration of them
in the time of W. 1. or of any part of that Law,
by which Lands had been enjoy'd before his com-
ing: I shall conclude my instances of this
kind in that County, which I know not how to
forget, with one concerning my own name, the
I am well assured, my first Ancestor there came
from Ash in Kent.

Of the Mannor of Gingham 'tis Entred.

f. 72.

In eadem tenet Will.
de Bosco 2 Hides & 16
Acras & habet in suo es-
cambio quod ten. Alfega
& Algarus T. R. E.

In the same, Wm of
the Wood or Atwood
holds 2 Hides and 16
Acras, and has them in
his exchange. Which
Alfega and Algar held in
King Edward's time.

As he had this in exchange, 'tis evident he ow'd
it not to the gift of a Conqueror.

The County of Norfolk being so near Essex, it
may not be time lost to observe the uniformity

held of Entries concerning that County, and a further confirmation of the Sence I have put upon some Entries, which might seem of a doubtful interpretation.

It being observed in the Survey, that there were 320 *Burgesses* in the City of *Norwich* in the Con-*Norwich* fessor's time, 'tis entred concerning but one of that number.

Erat ita dominicus Regis, ut non posset recedere, nec homagium facere, sine licentia Regis cui erat nomen Edstan.

He was so of the L. D. & Kings *Demeasn*, or at 116. tach'd to it, that he could not withdraw himself, or do *Homage*, without the Kings *Licence*, whose name was *Edstan*.

Of part of that City 'tis Entered.

Hoc tenet R. Bigot de dono Regis & de mcenturilli habebant Ran & Comes Socam & Sacam & Commendationem & super 32 habebat Haroldus Socam & Sacam & Commendationem quorum unus erat itael dominicus, ut non posset recedere, nec homagium facere, sine licentia ipsius.

This *Roger Bigot* holds, and of 1138, the King and the Earl have the *Soc.* and *Sac.* and *commendation* or *Homage*. And over 32. *Harold* had *Soc.* and *Sac.* and *Commendation*, of which one was so of his *Demeasn*, that he could not withdraw himself, nor do *Homage*, without his *Licence*.

So of the Borough of *Tutford* or *Thetford*.

In Burgo erant 958 Burgenses T. R. E. De his habet Romnem consuetudinem; de istis hominibus erant 36 ita Domi-

In the Borough there L. D. 118. were 958 *Burgesses* in the time of King *Edward*. Of these the King has all custom; of those Men

Men 36 were so of the Kings Demesne, that they could not become Men, or do Homage to any Body, without the Kings Licence.

nisi Regis ut non possent esse homines cuius libere sine licentia Regis.

Vid. Ho-
veden, f.
261.
Malms.
146. 6.

In this County a Saxon Earl with a British Mother, Ralph Guader, had Homagers under him till he forfeited, and a Fee or Fend, of which Stou was the head; and his great Estate there he had by inheritance from his Father, call'd Earl Ralph,

L. D. f.
128. 6.
Comes
Rad verus
T. R. E.

In Breceles 29 ac. semper dim. car. v. soc. in Sabam & prapostus de Sabham vendidit T. R. E. per unum Frenum Eudoni homini Comitis Radulfi & jacher. in elinegham ad firmam Radulfi & tenebat eos die qua foris fecit, &c.

In Breceles 29 Acres always half a Plough & Socmen in Sabham and the Bayliff of Sabham sold it in the time of K. Wm by one Frenum Eudo Earl Ralph's Homager, and they lay at Elinegham within Ralph's Farm, and he held them the day that he forfeited.

Vid.
Domet-day
f. 194.

Then mentioning Breceles.

Godricus eam revocat ad feudum Comitis Radulfi in Stou, dicens quod ipse eam tenuerat duob. annis antequam foris faceret & duobus annis postea: ex hoc offert quidam famulus Regis De Stou portare iudicium.

Godric calls this back to Earl Ralph's Fee in Stou; saying that he had held it 2 years before Ralph forfeited and 2 years after, of this one of the Kings Servants of Stou offered to bear Witness.

This Godric, who had been Earl Ralph's Bayliff, was afterwards the King's for that Fee,

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Hos reclamation R. Bigot ex dono Regis & sunt de feudo Alui de Tetfordo Antecessoris sui.

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This *Roger Bigot* was Lord of the City of *Norwich*, and Ancestor of the first Earl of *Norfolk*, after the time of *W. 1.* Some may suppose that *Bigot* had these of the Kings gift to him, as the King gave him *Alui's Fend*, and that *Alui* was only his predecessor in that *Fend*. But this is soon after determined to a different Sense, where, after the mention of those Freemen and others, 'tis added.

Hos liberos dedit R. Alui de Tetfordcum terris suis, sicut R. Bigot reclamatur.

These Freemen the King gave to *Alui* of *Tetford*, with his Lands as *Roger Bigot* reclaims them.

It may seem that *Alui* had these and his whole *Fes*, purely from the concession of a Conqueror, whereas it was plainly upon *Livery* to his Tenant in Chief at his coming out of *Wardship*: and thus the Land was his own before, tho he was not truly seized, till *Investiture*, according to the old *Feudal Law*; imitated, as I may afterwards shew, in Foreign parts. Whatever *Bigot* had, as succeeding to his Ancestor *Alui*, the Earldom of *Norfolk* with the City of *Norwich*, annexed in Tenure to the Earldom, he had of the Kings Grant, after the attainder of the younger Earl *Ralph Guader*, who maintained his Authority so absolutely till he Forfeited it, that the *Normans* could get but very little footing there, and that only from the concession of him or his Father.

After mention of 36 *Frenchmen*, who seem to have been in a part of *Norwich* called the new *Borough* in the Confessors time, and at the time of the Survey were encreased to but 41, a third part of whose Forfeitures went to the Earl, 'tis added,

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History

*Tota hæc terra Burgen-
nium erat in Dominio Co-
mitis Radulphi, & concessit
eam Regi in commune ad
faciendum Burgum inter se
& Regem ut testatur vi-
ce comes & omnia terra
ita tam militum quam
Burgenfium red. Regi
suam consuetud. est etiam
in novo Burgo quadam
ecclesia quam fecit Rad.
Comes: eam dedit suis Ca-
pellanis Ad. eam tenet sa-
cerdos Vice Comitis ex do-
no Regis nomine Wala.*

All this Land of the
Burgesses was in Earl
Ralph's Demesne, and
he granted it to the
King in common, to
make a Borough be-
tween him, and the
King as the Sheriff
Witnesses. And all that
Land, as well of Te-
nants by Military Ser-
vice, as of the Burges-
ses, yields the King his
customs. There is also
in the new Borough a
Church, which Earl
Ralph built that, Earl
Ralph gave his Chap-
lains. Now Wall the
Sheriff's Chaplain holds
it of the King's gift.

As the Earl's Chaplains were Saxons; so plainly
was Wall the Sheriff's Chaplain; and no wonder,
that the Frenchmen there were under a necessity
of Learning the Saxon Tongue; since, notwithstanding the vulgar error of Moderns, as if the
Vid. In-
standings in that time were in French, I could
witness that they were in the Saxon Tongue, and
for that very reason W. set himself with the
greater industry to be master of that Language.
Tho there are numbers of other tempting in-
stances to my purpose in that County Cynthius,
testis & admonuit aurum.

That my Learned Friend Mr Leneve, to the ge-
nerous liberty given by whom, and Mr Love
owe this and further light, is upon a full
history of Norfolk, and I ought not to anticipate
more

Deputy re-
mem-
brance.

more of those discoveries, with which he is upon obliging the World.

Yet I cannot forbear adding one more pregnant Entry, after mention of a certain *Freeman* or *Freeholder* in *Pinkenham*, 'tis added.

Tenet idem 30 ac ter.
 & postquam R. venit in istam patriam ten. istam ter. Comes R. Senior homo Wibenoc amavit quandam Feminam in illa terra & duxit eam, & postea tenuit ille istam terram ad feudum Wibenoc sine dono Regis, & sine liberatione & successoribus suis, &c.

The same man holds 30 Acres, and after that the King came into the Country, Earl Ralph the elder held that Land. An Homager to Wibenoc lov'd a certain Woman in that Land and married her, and held that Land to the Fee of Wibenoc without the Kings Grant, and without Livery, and to his Successors.

Here 'tis observable,

1. That this Land, tho' it was at first holden of Earl Ralph, was separable from his Feud; the owner being so free, that he could go with his Land whither he would.

2. That the Woman was Heiress of that Estate by Marrying whom Wibenoc's Homager was seiz'd to him and his Successors; those who should succeed upon that Marriage by inheritance from the Wife.

'Tis plain he had issue by her, and she being dead, he was Tenant by the Curtesy of England and therefore, besides that he was no Tenant in Chief, he but continued the possession which he had in the right of his Wife. Therefore he had no need of Livery; which, as it was an Investiture of the Fee, where needful, was properly

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Grant ; in which Sense, as I shall shew, our Kings have granted the *Kingdom of Scotland* to *Scotch Kings*.

As I have shewn Homage here, so much earlier then Sir T. C. will allow ; that Homage for the *Kingdom of Scotland* was due to the Crown of *England*, their two great Advocates Sir T. C. and Bishop *Lesly*, prove sufficiently to remove all prejudice against my re-asserting this Honour of Subjection as the right of my Countrymen beyond the *Twede*.

C H A P. VI.

Of the Testimonies of Sir T. Craig and Bishop Lesly of the Scotch Homage, and the consequence of it.

I May be thought a very confident undertaker to pretend to bring Sir T. C. and Bishop *Lesly* to my side in this Controversy ; but if I do, I hope I may the more easily perswade my Countrymen of *Scotland*, to submit to the prevailing force of Truth and Right, which with honest minded Men, is a more effectual Ballance of Power than property. Sir T. C. who would have been very hungry, if their Traditions were not treated with some respect ; says, ' most of that we find in the *English History* before the *Conquest* is vain and trifling, and almost all of it uncertain, except what is writ by the *Roman Historians*, and *Gildas* or *Bede*. This is the 3d proposition, upon which he uses his Talent of enlarging ; and a 4th ^{p. 45.} making that for granted, goes further to expose this

E

this Evidence, 1. As *Monkish*. 2. As *Domestic*.
3. From *Enemies*; but he is not aware that he
receives an Authority which sets up all that he
would overthrow.

Our faithful Historian *Hollinshead*, whom *Sir Thomas* charges with many Forgeries of his own, having in the course of History mentioned the Glorious Reign of our King *Canute the Dane*, that he was King of 4. *Kingdoms*, of which *Scotland* was one, and that he had subdued that Nation, which was not willing to receive him as Monarch of the *Island*; *Sir Thomas* says,

Sir T. C.
p. 235.

'I shall exhibit here one testimony of King *Edward* who succeeded *Canute*, which will overturn all those Calumnies.

'For when it was debated in the *Public Meeting* of the *States of Parliament*, who ought to be accounted as *Denizens* of *England*, and enjoy the same privileges with them; those of *Britany* in *France* were nam'd first, because they were originally from *England*; *Edward* added the *Welch* next, because King *Inas* married a Wife out of *Wales*; and at that time there was a general intermarriage between the *Welch* and the *English*. The *Scots* were mentioned in the third place, who almost all of them, especially the *Nobility*, had Married with the *English*, and so at that time two became one *Flesh thro'* all *Britain*; by which all became one *Nation* and one *People thro' the whole Island*. All those above mentioned (says he) did ever stand stoutly as one *Man* for the common utility of the *Crown* and *Kingdom*, against the *Danes* and *Norwegians*, fought most vallantly and unanimously against the *Common Enemy*, and bore the burden of most fierce Wars in the *Kingdom*.

'*Th*

' This, says Sir Thomas, I have transcribed *verbatim*, lest any one should accuse me of adding somewhat of my own.

In which it appears, that he need not have sought for proof of his Sincerity; yet if it had been entire, he would have added more out of that Law, of which afterwards.

He proceeds,

' This Law of Edward, *Wm. the Conqueror* confirmed in the *Public Meeting* of the States, as they are translated from the *Saxon Tongue* by *Wm. Lambard* in the Edition Printed at London by *John Day* in 1568, and indeed there are many things in this Law worthy the taking notice of.

Vid. Inf.
Sir T. C.
p. 176.

1. The first thing to be weighed is the Title; which is concerning those who *may, and ought of right* to cohabit and remain in the *Kingdom of Britain*.

' 'Tis expressly provided, that the *Scots may and ought of right* to cohabit and remain in the *Kingdom of Britain or England*, and be accounted *Denizens*, and enjoy the Priviledges of the *Kingdom*.

' There's a two-fold reason given in the Text, why they ought to be reckon'd among the *Denizens* of England.

1. Because the *Nobility* of Scotland, and almost all the People in general, had Married with the *English*, as many of the *English* had Married with the *Scots*, and therefore the *Scots* being descended of *English* Blood, they were of right to be accounted *English*.

2. Because all the People above mentioned did ever stand stoutly as one Man, for the common utility of the *Crown and Kingdom*, against the

‘ *Danes and Norwegians*, and fought it most valiantly and unanimously against the common Enemy, and bore the burden of most fierce Wars in the Kingdom. The doubling of the Adverb *Semper* deserves to be taken notice of, and that they waged most most fierce Wars together for the profit of the Kingdom of England.

3. Moreover, says Sir Thomas, the time when they became one People, and did unanimously sustain the impression of the common Enemies, is dated from the Reign of *Inar*, King of the English or Saxons, who came to the Crown in 689, and continued till his time, meaning the Confessor’s.

An. 689.

‘ Na here
he contra-
dicts him-
self having
allowed
Gildas,
Bede and
Ethel-
word.

‘ This one testimony, says he, of King Edward, I oppose to those of all the English Historians, who write that the King of Scots did so often Rebel, and conspire against the English with the Danes and Norwegians, was so often Conquer’d, Surrender’d and Forced to become a Suppliant; for this Edward was elder than any Historian now extant in England. Nor have they any Historian from the Death of Bede to this Edward before the Conquest, who was a prudent Man, and a very substantial evidence of the things that were done before. Moreover, this Law was approved by the States of England, who, its reasonable to suppose, understood more of the Transactions which hapned before their time, than any Monk of the 2 following Ages; and therefore, by the Testimonies of King Edward, that of the States of England, and the Conqueror himself; the Scots during the time of the Saxon Monarchy were their fellow Soldiers and faithful Companions, had the same Friends and Enemies in common, and fought manfully

for their safety against the Danes and Norwegians; and did thereby deserve to enjoy the same privileges with the English. These things; says he, I have insisted upon to refute their Calumnies, who alledge that the King of Scots ought to be excluded from the Succession to the Crown of England as a Foreigner.

And this long passage I have transcribed, that it may appear from such Ancient Testimony receiv'd by Sir Thomas himself, that the Successor to the Crown of England will, by the very Succession to this Crown, be entituled to the Allegiance of the Scots, as born Denizens or Natural Subjects of the Kingdom of England or Britain.

This is evident from the Authority so greedily catch'd at by Sir Thomas for the point of the Succession, that he overlooked the apparent proof of not only Homage but Allegiance, which is of further importance.

To manifest that it was unluckily produced to contradict our Historians.

I must observe,

1. That their being fellow Soldiers and faithful Companions, infer their being sworn Brethren with the rest of the Subjects of the Crown of England; which plainly appears from what he has cited, but will be undeniable, when we come to view what he has conceal'd.

2. The *Semper*, which he relies on, does no more infer, that the English and Scotch joyn'd to repel Invaders, they never quarrell'd among themselves; than it implies, that none of the English were guilty of Rebellion, or joyning with Invaders; but this related to the joyn'd obligation always to resist Invaders, tho they did not always discharge their Duties.

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3. The joyning together in opposing the Danes and Norwegians, is no argument against what our Historians say of the Scots being Conquer'd by Canute the Dane, after he was Crowned King of England; and the rather, because as it may be seen in the *Historian Knighton*, Canute came in, and made his claim upon an old Saxon Title.

P. 3. 3.

Sir T. C.
p. 149.

4. 'Tis wonderful, that Sir Tho. could not discern his contradicting what he had asserted, as an evidence, that there could be no Homage paid for the Kingdom of Scotland to that of England, from the coming of Hengist in the year of Christ 476 or 479. until King Egbert's Reign, under whom the 7 Kingdoms were united, which is not supposed to have been before the year 831. When he owns, that the whole Island made but one Kingdom from King Ina's time, which was above 140 years before.

Tho in one sense England, Scotland and Wales were but one Kingdom, as they had but one Imperial Crown; This does not imply, that there was but one King even in England: that there were more than one in King Ina's time, and since, Edward the Confessor and his Great Council or Parliament could not but know; yet as they assert it to have been an entire Monarchy from Ina's time; 'tis certain so it was, tho the Primacy was desultory, sometimes with one division of the Saxons, sometimes with another, till it rested with the West Saxons.

5. K. Edward and his Parliament, and W. I. with his, held England to be the Seat of Power, and that its Kings were from Ina's time Monarchs of all Britain: and by consequence, that if there were such a thing as Homage in those

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Times, all other Kings within the *Island* were *Vid. Inf*
Liege Homagers to that *Monarch*, is very evident
 from this quotation; which shews, that all up-
 on the *Island* were one *Nation*, united for the
 common utility of one *Crown and Kingdom*, and
 that was the *Crown and Kingdom of England*. This
 is the *Confessors Law* is exprest, and *Sir Tho. Craig*
 admits, was the *Crown and Kingdom of Britain*;
 which, as every Man knows, takes in the whole
Island.

And it may well be ask'd whether at that time
 it was thought, that there was more than one
Kingdom of Britain, whatever *Kingdoms* might
 have been within it?

Thus has *Sir Thomas Craig* unwarily mentioned
 one great, and undeniable evidence of the *Superi-*
ority of the Crown of England, without put-
 ting us to have recourse to *Monks*, and those
 of *Sir T. C.* supposes of no earlier times than the
 reign of *H. 1.*

It may not be improper to add, what their *Bishop*
Bishop Lefly says upon the very point of *Succession*.
 with which *Sir Thomas* closes this Quotation.

It having been objected against the claim of
 the *Queen of Scots* and her Son, to succeed to the
 Crown of *England*, that by the Common Law of
England, *Foreigners* cannot inherit in *England*;

and that the exception of the *Kings Children* in
 the *Stat. of E. 3.* concerning Persons born un-
 der a *Foreign Allegiance*, cannot extend to the

Grandchild of a Daughter *extra familiat*; 'that
 the *Queen of Scotland*, says he, was born in
Scotland we must needs yield. But that *Scot-*
land is under the *Dominion of England*, altho our
 most *Serene Queen*, and all her Subjects of *Scotland*
 of right denying; yet very many of *England*,

both of the Learned and of the Vulgar constantly assert and affirm, being induced and persuaded to this chiefly by various Histories, and also by Registers, Records or Written Memorials, and Instruments of Homage, as they call them, which they say are extant in Archives of that Kingdom; in which, they say, there's mention that the Kings of Scotland acknowledged the King of England for Superior Lord of the Kingdom of Scotland, and did Homage to him; which if it be true (altho the Scots as I said, deny it), who truly assert that Homage which they call Fealty, was exhibited only for certain Lands and Territories, in the Northern part of England, viz. Northumberland, Cumberland, Huntingdon and other Counties of the Kingdom of England bordering upon the Kingdom of Scotland, which are not now under the Government of the Scots 'tis wholly necessary by the Common Law of England that the Kingdom of Scotland ought to be accounted and taken to be within the Dominion of England.

1. Here the wary Bishop, who was conversant with our Learned Men in Queen Elizabeth's time, owns, that the English cited not only Histories, but Registers, Records and even Instruments of Homage for the Kingdom of Scotland; and if he had not found, or been satisfied that there were such, we should have heard of it from him, to justify his denying it; tho he uses the supposition as an argument *ad hominem*.

2. He takes it for an undeniable consequence, that if Homage was due for the Kingdom Scotland is within the Dominion of England: this he urged only for his purpose, to prove their Queen no Foreigner; but it as plainly serves in the present question, whether since the Crown of

Scot-

Scotland is devolved upon the Possessor of the Crown of England, it can rightfully be separated from this Crown, without the consent of that Person or Body, which can dispose of the Crown of England, or its chief Rights. That it cannot be otherwise separated will follow, even from Sir Thomas Craig's argument against the continuance of the Superiority of the part now call'd England over Scotland; from the supposed division among the 3 Sons of Brutus, Loelinus, Camber, and Albanactus; 'The only thing, says he, I wonder at is, how this Superiority came to be continued to these Times; for if Loelinus had the superiority of Albany, and succeeded to Albanactus, it necessarily follows, that the Liege Fee was extinguished with Albanactus, and that Albany returned to the Superiour Lord, *per consolidationem utilis domini cum directio*, as is usual in Vassalages, where the Lord of the Dominant Estate succeeds to the Lord of the Subordinate.

Sir Thomas would argue from the Nature of Homage, as implying a benefit receiv'd, and the Divisions in England in the British times and since, that it is not likely the Scots should do Homage to the Crown of England, as receiving any part of Scotland, as a Benefit or Gift from the Crown of England; but soon admits that protection might have been a ground of Homage, and this any Man may see to have been so in our Feudal Law, who observes the Homage, which men of another Feud paid a Superiour Lord, as *commendati*, or under his Protection.

That upon this account the Scots might have been Homagers, and that without any supposition that their Kings went further in the giving it, than the Constitution of the Kingdom would

Sir T. C.
p. 71.
Vld. Inf.
Cap. 7.

Sir T. C.
p. 59. 61.
If the Kingdom of Scotland was ever part of the Patrimony, or under protection of

that which is now call'd the Kingdom of England, War- &c.

p. 249

An. 833.

Warrant, and that this might have been translated from the *British Monarchy* to the *Saxon*, by the free consent of the People of *Scotland*, I desire Sir *Thomas Craig's* own Testimony to be compar'd with the Authority of that part of the *Confessor's* law received by him as above. 'While, says he, the *British Monarchy* was still in being, the *Saxons* rag'd against one another with mutual slaughters, untill the rest of the *Saxons* being Conquered, the King of the *West Saxons* obtained the Sovereignty of all *England*, except *Wales*, which hapned about the year 833. and therefore it is not likely, that they were intent upon the swallowing up of other Kingdoms during that time. And before that the *Danes* did exercise Piracy upon the Maritime Counties, and being invited by the fruitfulness of the *Island* and other things; and following the same methods that the *Saxons* had done before them, they conceived hopes of seizing the *Kingdom*; and therefore, the *English*, tho' they did willingly unite in one *Kingdom*, they did also desire the conjunction of the *Scots*, that they might be the more able to resist the common *Enemy*.

'The *Scots* did readily consent, and especially for two Reasons.

'1. Because the *English* had a little before embraced the *Christian Religion*, to which the *Danes* were capital Enemies.

'2. Because they had experienced the Valour of the *Danes*, when they slew *Constantine* the King of the *Scots* and his Army, and perceiving that they should be liable to the same danger, they did willingly associate their Arms with the *English*; and Alured himself, being assisted by the *Scots* Auxiliaries, did break the strength of the *Danes*.

Upon

Upon which, 'tis observable.

1. That he owns the *Scots* to have Voluntarily joyned with the *English* in one Kingdom; and if this is not plain upon his confession here, it is from his Quotation of the *Confessor's Law*.

2. He is confus'd as to the time of its beginning, and gives Reasons, which seem of different Ages; that of the same Religion and mutual Danger from the *Danes*; which name has been applied to all the Northern Pyrates, tho' before the settling of the *Saxons* here, they were called *Saxons*, began very early in the *British* times; but the overthrow of their King *Constantine* was in our *Atelstan's* time, unless it were one of the fabulous Kings, yet he admits it to have been thus in our King *Alfred's* time.

3. That there was an head of this Union in all these times, is but a necessary consequence, and all our Historians and Records shew, that there was a *Rex Primus* of all *Britain*, the whole Island, before the supposed first Monarchy of *Egbert*; The authority of the *Confessor's Law*, that it was in *Inae's* time, and that the whole Island continued one Monarchy to the *Confessor's* time, is not to be denied.

I suppose it will not be pretended, that *Scotland* was ever the head of this Union; or that they were ever able to scour the Seas, to secure themselves from the invasions of the *Pirates*.

While the old *Romans* exercised Authority within this Island, they seem'd possessed of all the Naval Force, by which they maintained a Superiority, and they had a *Comes Littoris Saxonici*, an Earl of the *Saxon Shoar*, or Protector of the Shoar from *Pirates*, of the Nature of our Lord High Admiral; this was throughout *Britain*, whether the

En-

English or the *Scots* have had most right to have such an Officer from among them, 'tis easy to determine. Thus it may be evident to any Man from what Sir *Thomas Craig* has produced and admitted; that the *Scots* have without any dishonour to them, acknowledged the head of the *Monarchy* to be in *England*. The grounds for which have been very ladauble.

1. For the sake of Religion.
2. For the defence of the *Island* against barbarous Invaders.

C H A P. VII.

Sir *Thomas Craig's* Notions of the *British Times* examined: In a short consideration of the question, who were the first Inhabitants of this *Island*, and how and when the *Picts* and *Scots* settled here. Of Sir *George Mackenzie's* Whim, as if the Land of the *Scots* in *Britain*, was Anciently called *Ireland*.

What has been already observ'd, may prepare the way for Men's listning to particular proofs of what Sir *Thomas* has more than pointed at, and made more easy to follow up to the *British* times.

p. 143.

Sir *Thomas*, it seems with the approbation of our *Learned Bishop*, says,

'Long before the name of *England* was known, we had many Kings in *Scotland*; nay, some of them possessed *Britain* itself.

Hence he would seem to argue as if *Scotland* ought more properly to be accounted the head of the *Monarchy* than *England*. He adds, 2

to what concerns the Kingdom of the *Picts*, it cannot be called their *Benefit*, for that we acquired by our own proper valour against their will, they having taken Arms in defence of the *Picts*.

Which is a piece of History invented to serve as Hypothesis; for it cannot be shewn, that any *Britons*, but such as were under the Dominion of the *Picts*, took Arms in defence of them; but the truth is, that the *Britons* in that part, which is now call'd *England*, assisted the *Caledonian Britons* against both *Picts* and *Scots* afterwards from *Ireland*. Over the *Caledonian* and other Northern parts of *Britain*, it seems he will suppose the *Scots* had a right of Conquest; and yet will not allow that Conquest could restore the *Britons* to their right of immediate Subjection to the Imperial Crown of the *Island*.

It hardly could be thought, Sir *Thomas* should sub-join matter so contrary to the right that he would infer for the *Scots*, by denying the right of restitution in the same manner. Not observing the old Maxim, *every thing is freed in the same manner that it is bound*.

He adds immediately, but they will say there's another way of acquiring *Fealty* and *Homage*, *p. 143.* viz. by force of Arms.

This he expressly denies to confer any right to *Fealty* or *Homage*; and as the true Question is of *Liege Homage*, not strictly *Feudal*; he not only denies the Right of the *Scots* to govern the *Britons* among them, but overthrows the Right of most Kingdoms which have been founded in consent, occasioned by force of Arms.

But it may here deserve consideration.

1. Who were first settled here.

2. Whe.

2. Whether the *Picts* and *Scots* were ever Lords of the whole Island, and when they or either of them began to be formidable to the Britons,

Buch. Re-
rum Scot.
lib. 2. f.
21.

Ad pri-
ores ul-
mi acces-
serunt.

An. 80.

Buchanan, who has set off the *Scotch* conjectures with all the art of the best of Poets, to whose commendation it is to make Fictions hang together and pass for Truth; tho he to Honour his Country men, gives them Kings 300 years before our Saviour, receiving the Authorities of *Julius Caesar*, and *Bede* agrees, that the first Inhabitants of this Island were Britons. But then to make a good title to the *Scots*, he says, 'in process of time, the *Picts* granting them empty Seats in their parts, the *Scots* came the last, as an Accession to those that were here before.

He takes notice of an objection against the Dominion of either *Picts* or *Scots* here, in *Martial's* time, which was about the year 80 after Christ.

Quinto Caledonios, Ovidi! Visura Britannia.
O *Quintus Ovid*! who art going to see the *Caledonian Britons*.

And he agrees, that *Bede* in his Book calls those who were beyond the *Picts* Wall,

Britannos Peregrinos & Transmarinos.

Foreign and Transmarine Britons.

Which, take it either as the difference of customs and the small Waters which divided them and the other Britons rendred them, as it were Foreigners, beyond the Sea, or that they of Foreigners were become Britons; in either Sense proves, that the Empire was then with the Britons. Nor does *Buchanan's* disguise of the truth here help the matter.

B. f. 21.

Sed nullus eorum propterea Pictos eos fuisse negat. But, says he, no one of them therefore de-

sid

sed jure tamen optimo Britannos vocant, nam quemadmodum tota Insula Britannia vocatur, ita universi ejus incolae Britanni merito vocantur.

nies that they were *Picts*. Nevertheless they most rightly call them *Britains*; for the whole *Island* is called *Britany*; so all its inhabitants are deservedly called *Britains*.

Indeed *Buchanan* has a particular Whim of his own, which will appear without Foundation, as if none but the more Southern Inhabitants were ever called *Britons*.

Thus 'tis plain enough, that both the *Scots* and their forerunners the *Picts*, came in upon the Possession of the *Britons*: Whether they were admitted to settle here without any acknowledgment, I shall soon enquire. As to the time of the settlement of the *Scots* as a Kingdom, a Bishop of great skill in Antiquities, transcribes this memorable passage from the most Learned Man, perhaps of many Ages, the incomparable Bishop *Usher*.

'I do not believe, that there is any Writer that lived within a thousand years after Christ, that once mention'd the name of *Scotland*, and doth not mean *Ireland* by it.

An Historical account of Church Government, as it was in Great Britain, &c. ed. An. 1684.

This doubtless was true; but if, as the present Bp. of Worcester, seems to hold, *Scotland* was not the name of any Country besides *Ireland*, till the *Scots* came from *Ireland*, who had mixed with the *Britons* and *Picts*, had the Government of all that part of *Britain*, of which they are now possess'd; that will evidently appear to fall later than either Bishop *Usher*, or he places it, as the *Northan Hymbrian Kingdom*, which Bishop *Usher* shews to have extended a great way into *Scotland*, maintain'd its extent under *Earls*, within the *Confessor's* Reign,

How-

However, I agree, that they not only had a Settlement in *Britain*, but *Kings* of their own within this *Island*, before the year 1000, but that the *Kings* and *People* were under the *Monarchy* of this *Realm*, I shall soon shew.

It must be agreed, that the flower of the *British* Youth, having gone beyond Sea with *Maximus*, whose Father was a *Briton*, the rest of the *Inhabitants* who had not been used to the War, were miserably harassed in those places, which lay open to Sea Robbers.

Gildas f.
12. Gen-
ribus tran-
smarinis
vehemen-
ter senis
Scottora
Circione
Pictorum
ab Aquil-
ione per
annos Cal-
cabillis
Multos
stupet ge-
metq;
Tetri
Picto-
rumq;
Greges,
&c.

Gildas names the *Scots* from *Ireland*, and *Picts* from the North as the chief of them; but to plain, that those were but predatory irruptions, and whatever footing the *Picts* might keep for any time, the *Scots* came but for booty, and a Roman Legion soon obliged both *Scots* and *Picts* to return after their first attempt. The Legion being gone back, the *Scots* and *Picts*, tho for the most part at variance with one another, agreeing together in rapaciousness, returned to the spoil which, excepting the excursions, in which they destroyed the Corn in neighbouring parts, seem to have reached no further than a little way within the *Picts* Wall; and the *Region*, where the *People* for want of Bread, lived by Hunting, was certainly no more than the Country thereabouts; and yet the *British Nation*, as they then had *Parliamentary Assemblies*, might well joyn in an *Embassy* for assistance against such troublesome Visitants.

'Tis ridiculous to imagin, that the *Britons* were entirely subdued, and no part was free from the insolence of *Conquerors*; for, if it were so, it is certain they could have no opportunity of *Assembling* to joyn in the complaint, without which

could not have been *National*. But as this was a solemn *Embassy*, and an offer to the *Romans* of further Subjection than ever had been before; is like other *Councils* of all *Britain*, which I shall shew upon the like occasions, and such as manifest the freedom of them who met in *Council*. The *Scots* being loaded with booty returned to their Country; but, as *Gildas* relates, 'the *Picts* then first, and from that time forward rested in the furthest part of the Island; sometimes making prey and waste, the people being spoil'd during such Truces, an horrid Scar is drawn over, another more violent growing out. For the devastation ceasing, the *Island* abounded with such plenty, that no past Age had remembered the like, with which of all kinds *Luxury* encreased.

Then he speaks of the *choice* of their Kings, for the worst qualities, upon which 'tis observable. 1. That this account from *Gildas*, whom Sir T. C. pretends to follow, is far from countenancing Sir T. C's assertion, without mentioning any the Author to colour it, that 'the *Scots* and Sir T. C. *Picts* not being numerous enough to people the farther Provinces of the *Britons*, those the *Britons* did then hold, and gratefully accept, from the bounty of the *Scots* and *Picts*, paying Tribute to the *Conquerors*; giving *Hollages*, submitting to them in every thing *Divine* and *Humane*, and abjuring the protection of the *Romans*.

2. That the beginning of the power of *Picts* and *Scots*, or either of them here, was after *Maximus* had drawn the *British Soldiers* into *Foreign* parts; but this *Maximus* did not Reign here till the year 383 after *Christ*: So that the *Scotch* King-

Kingdom 300 years before Christ, must have been in Ireland.

Nennius, who follows next after Gildas, shews that in truth the depredations of the *Picts* and *Scots*, were chiefly, if not wholly upon those *Britons*, who inhabited that part which the *Picts* gain'd possession of; and tho' the *Scots* had been there in his time, the *Picts* had the Dominion over such of them as resided there.

Having spoken of the settlement of the *Britons* here, he adds,

Nennius
E. 1.

Post intervallum annorum non minus 900 Picti venerunt, & occupaverunt Insulas quae Orcades Vocantur, & postea ex insulis affinitatis vastaverunt non Modicis & Multas regiones occupaveruntq; eas in plaga sinistrali Britanniae & Manent usq; in hodiernum diem. Ibi certam partem Britannia tenent usq; nunc.

Several years, after no fewer than 900 *Picts* came and occupied the *Islands*, which are call'd the *Orcades*, and afterwards from neighbouring *Islands*, wasted small and many Countreies, and occupied them on the left side of Britain, and remain there to this day. There they to this time hold a third part of Britain.

Here it appears, that what the *Picts* and the *Scots* (who fought under them) wasted, the *Picts* kept, and that all this must have been most of what is now called the Kingdom of Scotland, being a third part of the Island of Britain. And this was by Nennius taken to be within the British Kingdom; to be sure Britain could not mean only of that part which was within the *Picts* Wall, with which interpretation the *Scots* would

would endeavour to evade the Ancient Authorities, proving the whole Island to make one Monarchy. That the *Picts* settled here before the *Scots*, and all the power which either of them had, was truly *Pictish*, appears by the *Saxon Chronicle*, which *Bede* plainly follows, but I chuse to use the words of the *Chronicle*.

'The first Inhabitants of this Land were *Brittes*, Vid. Chron. Sax. Lat. In the Sax. on Brit- tes. or *Britones*, who coming from *Armenia*, settled at first in the Southern part of *Britain*; afterwards it happened, that the *Picts* from the Southern part of *Seythia*, carried very many long Ships, and arrived at the Northern part of *Ireland*, and asked leave of the *Scots* to inhabit there. But they would not permit them, yet the *Scots* answer'd, we can nevertheless help you with our advice. We know another Island Eastward from hence; where, if you think fit you may dwell, and if any Body will resist you with Arms, we will help you to subdue it.

'Then the *Picts* went from thence, and entred this Land in the Northern part; for, as we said before, the *Britons* had the Southern. Then the *Picts* desired Wives of the *Scots*, with that condition, that they should always take their *Royal Stock* from the *Female side*, which was a *Custom* observed by them long after.

This Fundamental right of the *Scotch Royal Family*, I may allow to continue a descent from the *Pictish Scotch Kings*; but as it is far from making their part a *Scotch Kingdom* here, till they prevailed over the *Picts*; so it is a fatal Bar to the *Divine Right* of that long Succession of *Kings*; unless they form a new Scheme of the *Patriarchal Power*, in which that Notion is founded.

Vid. Sir R. Filmer's Works, and the Refutation of his absurd Notions in a Treatise about Government. An. Carl. III 78. The learned Publisher of the last Edition of the *Saxon Chronicle* observes, that this coming of the *Picts* was according to *H. of Huntingdon* 800 years after the *Britons* were settled here, and as *Mathew Westminster* holds 75 years after Christ; but as appears above, even the *Picts* were not formidable here till long after. If here we should distrust the *British Writers*, and rather believe the *Saxons* who held, that the part of *Britain* where the *Picts* settled, was not cultivated by the *Britons*; yet, that could not give the *Picts* a right of occupancy to an independent Government, since they ow'd their possession to the permission of the *Britons*, who had a *Monarchy* here long before; and were under the obligation of local Allegiance, to defend the right of the *British Crown*; and this, as will appear, was always maintained by the *Britons*, and after exacted from the *Picts*, and yielded by them.

Vid. Calvin's case 7 Rep.

Chron. Sax. p. 2.

An. 597.

The *Chronicle* observes, that many years after the *Picts* settled here, some of the *Scots* from *Ireland* coming into *Britain*, got some part of this Land. That their Leader was one *Reod*, from whence they were called *Daelreodi*: He in *Bede* is called *Reuda*.

The first time that I find the *Scots* mention'd in the *Chronicle*, as a body of People acting here without the *Picts*, is in the year 597. where speaking of *Ceolwulf*, who began that year to Reign over the *West Saxons*, it says, 'he had continual Wars either against the *English*, or the *Britons*, or the *Picts* or the *Scots*.'

Whether these *Scots* acted by themselves with the power they had here, or in conjunction with *Scots* from *Ireland*, and so under a *Scotch King*, does not appear.

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I should think it probable, that they looked upon the head of their *Cann* in *Ireland* as chief, if I did not find undoubted Authority, that they were Soldiers and Subjects under our *Northan Hymbrian King*; for which I have no less a Voucher than the *Saxon Chronicle*, which of the year 803 says.

An. 803.

Her *Aegthan Scotta*
Cing feat with *Daelreoda*,
& with *Ethelferth* the
Northymbra Cing, & *Da-*
gstan, & man of *flod*
naest ealne his here.

In this year *Aegthan*
King of the *Scots* fought
with the *Daelreodians*,
and with *Ethelferth*,
King of the *Northan*
Hymbrians, and almost
all his Army was cut
off.

These *Daelreodians*, as the *Chronicle* had shewn before, were those *Scots* who came hither under *Reoda*; and, as this passage shews, had put themselves under the protection of the *Northan Hymbrian Kings*, and made part of *Ethelferth's* Army.

Bede, who agrees with the *Chronicle* in substance, calls that King of the *Scots* *Edan*, and both call the same Man King of the *Scots*. To which matter in a true light, it will be convenient to give some parts of *Bede*, and compare them with the *Chronicle*.

Bede speaking of the *Monk Austin's* coming hither, says,

Bede lib.

I. C. 3. 4.

In these times the most Valiant and Ambitious King *Ethelfrid*, who waited the *British Nation* more than all the *Chieftains* of the *English*, Reigned in the Kingdom of the *Northan Hymbrians*. *Edan* King of the *Scots*, who inhabited *Brittain*, came against him with an immense

F 3

Army

'Army; but being overcome fled away with a few, nor from that time to this day, did any one of the *Kings* of the *Scots* dare to come into Britain, to fight against the Nation of the *English*.

Vld Str
G. M. A.
Antiquity
of the
Royal Line
defended
p. 26.

I will agree, that by Britain, Bede in one place means that part which was more immediately in the possession of the Britons and Saxons, and after he has followed former Writers, calling the *Picts* and *Scots* transmarine People, qualifies and restrains the expression to what they were in his time.

Na Str. T.
C. carries
it to 734.

But in this place of the *Scots*, it must be meant of those who truly were transmarine, to distinguish them from the *Dacredians*, or else Bede departed not only from the *Saxon Chronicle*, but from *Gildas*. Bede carrying his History to the year 731. 'tis to be remember'd, that from the overthrow of *Eden* in the year 603 to 731, the *Scots* did not venture to come into Britain.

Lay but Bede and the *Saxon Chronicle* together and as it appears, that the *Scots* which *Essefr* subdued, were those who lived out of Britain; the *Saxon Chronicle* demonstrates, that they lived out of the Island of Britain, shewing, that the *Dacredians*, the *Scots* who came hither under *Reod* or *Reuda*, fought under the Northan *Hygelric* King, and therefore the King of the *Scots* was the King of them who inhabited Ireland.

Chron.
Sax. An.
429. p. 10.

That thus it was taken in the *Saxon Chronicle* which is a better Authority than Bede, cannot be denied. And in the same sense speaking of the year 429. it says of *St Patrick*, who all agree have presided in Ireland; 'That year he was sent by Pope Celestine to Scottum, the Scots. Upon which Florence of Worcester thus comments, 'St Patrick

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Briton by Birth, is consecrated by Pope Celestine, and sent to the Archbishops See of Ireland.

It seems, *Edan* King of these *Irish* Scots supported the *Picts* of *Lodeny*, which was the head of *Pictland*, and yet continued under the *Northan-Hymbrion* Kingdom, as I shall shew, till within the Reign of *Edward the Confessor*.

That after the time of King *Ethelred's* striking a Terror into the *Scots*, *Lodeny* or *Pictland*, was immediately under the *English*, I have no left authority than *Bede*, of whose credit *Sir T. G.* is very careful, *Bede* speaking of the year 876. An. 876. Vld. 181

'The Province of the *Picts* was then under the Government of the *English*. So that the *Saxon Chronicle* and *Bede*, joyn in putting it beyond all question, that as the Province of the *Picts* was under the Kings of the *Northan-Hymbrions*; So were all the *Dacredians* or *Scots* that settled here. Sax. Cron.

That thus they continued all *Bede's* time he intimates plainly enough, when giving the posture of affairs in *Church* or *State*; when he left off An. 731. Writing, he says.

The *Picts* have a *League of Peace* (which that it must have been upon the terms of Subjection, the circumstances of the time, and the thread of *Bede's* History evince) But the *Scots* are spoken of only as *Inhabitants*, without any head of their own Nation, for he says. Fœdus pacis.

'The *Scots* who inhabit *Britain*, being content with their own bounds, attempt no Ambushes or Frauds against the Nation of the *English*.

That the *Scots* were under the Government of the *Picts* in *Bede's* time, is more than conjecture, for speaking of the declining state of the *Saxons* from the year 684. he says,

Rede C.
15. f. 346.

*En quo tempore spes ca-
pit & virtus regni Anglor.
fluere ac retro sublapsa re-
ferri, nam Picti terram
possessionis suae quam te-
nuerunt Angli & Scoti
qui erant in Britannia,
Britonum quoque pars non-
nulla libertatem recepe-
runt.*

From which time
the hope and virtue of
the Kingdom of the
English began to fall,
and go backwards; for
the Picts recover'd the
Land of their possession,
which the English and
the Scots who were in
Britain had, and some
part of the Britons Li-
berty.

'Tis evident; that we must seek lower down
for any Kingdom of Scots among us.

The Author of the *Polycronicon* writ in the
time of R. 2. rightly says, 'the first King of the
' Scots, was Kinedy or Cuned the Son of Alpin;
but, was plainly mistaken in thinking that by
dispossessing the Picts, he annexed that part which
the Picts Inhabited, to what was at the time of
his Writing the Kingdom of Scotland.

For as I shall shew, the chief Pictland, Lodony
they had long after from the Grant of one of
the King's of England; and besides, there were
Britons in other parts of what is now called
Scotland, who were not under the Scotch Go-
vernment first settled in Britain.

That Cuned was the first King of the Scots set-
tled here, we have the Authority of Nennius
he speaking of the Picts who had obtained part
of Britain, mentions their continuing a People
here, till they were expelled by Cuned and his
Sons, from all the British Regions.

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This *Cunedor Cunedda*, the same with *Kinedy* the son of *Alpin*, according to the *Register of Mail-ros*, began his Reign over the *Scots* in the year

An. 843:

And this is the earliest date of the Ancient Kingdom, which was after the *British* Monarchy, was translated to the *Saxons*.

This passage in *Nennius* may rectifie a mistake of the time when he writ. The late Learned Dean of York, Dr Gale, being led by the judgment of the Person, who Titled the *Cotton MS.* of *Nennius*, held that he flourished about the year 620.

The time of *Nennius*.

But the present Bishop of *Worcester* upon better grounds, places it about the year 850. *Nennius* therefore being of the very time when the Kingdom of the *Scots* in *Britain* began his Testimony against the Antiquity of their *Kings* here, must needs wipe off all Sir *George Mackenzie's* Artificial Colours.

B. of Worcester's Pref. to his Historical account.

He being aware, that it was impossible to prove any Kingdom of the *Scots* here for 1000 years after Christ; unless we could believe, that the part which the *Scots* now possess, was anciently called *Ireland*, applies all his skill to make it seem so.

For a tast of his skill, it may be enough to consider the proofs for his notion out of *Bede*.

First, says he, *Bede* relates that *Egfrid* King of *Northumberland*, having sent an Army into *Ireland* under *Bertus*, he wasted the Country and the innocent People; and the next year having sent an Army to waste the Province of the *Picts*, contrary to the advice of his Friends, and of *St Guthbert*, God suffer'd that Army to be destroyed, because the former Year he had rejected their Advice, that he should not invade *Scotland*, which did not wrong him.

Defence of the Antiquity. p. 164. Bede lib. 4 c. 26.

To

Nordam
humbro-
rum.
Ne Sco-
tiam &c.

p. 165.

To disguise the matter, as if it were not likely that *Egfrid* could be so powerful a Prince, as to make an Invasion by Sea ; Sir *George* calls him King only of *Northumberland*, when *Bede* calls him King of the *Northanbumbrians* or *Northanbymbrians*, which Kingdom comprehended several Counties. 'Tis further observable, that *Bede* calls *Ireland* *Scotland*, or the Land of the *Scots* ; but it would be a perfect fallacy thence to infer that the Land which the *Scots* now possess here, was ever called *Ireland*. Sir *George* is aware, that every one would discern this ; and therefore, to make good his Notion says,

'To clear, that the *Scotia* here express'd was not *Ireland*, he adds, the *English* and *Scots* who abide in *Britain*.

That this could not be joyned to what went before is evident, as there is no manner of coherence ; nor can it be imagined, that *Bede* should make the *English* King *Egfrid*, to invade the *English* and *Scots* in *Britain*. But *Scots* being spoken of by him residing in *Britain* ; it shews, that their Kingdom or Land was not in *Britain*, but elsewhere ; and indeed, *Bede* expressly shews, that what Sir *George* supposes to have been *Scotland* here, was *Pictland*, and restored to the *Picts*.

Bede f.
246. Vld.
sup.

Picti terram possessionem suam quam tenuerunt Angli, & Scoti qui erant in Britannia &c. receperunt.

The *Picts* recovered the Land of their possession, which the *English* and the *Scots* who were in *Britain* held.

Sir *G. M.*'s next passage from *Bede*, is where he says,

T

' *Thas Columbanus*, an Abbot and Presbyter *Sir G. M.*
came in the year 565. from *Ireland*, to preach the p. 166.

Word of God to the Provinces of the North
Picts, and converted them, and got from them
possession of the former *Island*, for Founding a
Monastry where he was Buried; out of which
Monastry (meaning *Hy*) many other Mona-
stries were propagated in *Ireland* and *Britain*,
in all which the same *Island Monastry* was the
chief.

' And he takes notice, that the Successor of
this Abbot differ'd in the observation of *Easter*
from the Church of *Rome*, till the year 716.
And there after, he says, that *Aidan* was sent
from this *Island*, for instructing the Province of
the English. Now he had said before *Aidan*,
who was sent from the *Isle* which is called *Hy*,
which is the chief of the *Scottish* and *Pictish* Mo-
nastrics, and belongs to *Britain*. And there-
after he says, that *Colman* seeing his Doctrine
sighted, and his Adherents despised, returned
to *Scotland*.

' So that, says *Sir George*, we see, that that
which at the first is called *Ireland*, afterward is
called the said *Island*, and the *Monastry* in it the
Island Monastry; and there after it is called
Scotland.

' *Sir George* must needs have had a mean opini-
on of his Readers, to think they could not see
thro all this.

1. He makes *Columbanus* and *Colman* the same
Person, whereas they were 2 Persons at great
distance of time one from another, for *Co-*
lumbanus or *Columba*, according to the quotation
above from *Bede*, converted the *Picts* in the year
560.

Bede An. 560. and **Colman** was Bishop of *Lindisfern* in the
 560.
Cron. Sax. year 665.

665.

2. If all that **Sir George** has here tack'd together belonged to the same Person, it would prove no more than *Ireland* was call'd *Scotland*.

3. The said *Island* which he says, is call'd *Scotland*, is only the *Island of Hy*. If that was all the ancient *Kingdom of Scotland*, let the Nation take to themselves that Honour of Antiquity.

4. If *Bede* by the *Province* of the *English* meant all *England* and not *Pictland*, which *Province* he elsewhere says, was under the *English*; then by the like construction; the *Province* of the *Picts* comprehended all in *Britain*, who were not immediately under the *English Britons*; which, as has appeared above, was *Bede's* meaning, but where could *Scotland* or a *Kingdom of Scots* be then found but in *Ireland*.

p. 167.
Bede lib.
 3. c. 27.

Sir George, I take to be no more fortunate in his 3d passage from *Bede*.

Where speaking of a great Plague in *Britain*, he adds, this Plague also wasted *Ireland* with the same destruction, at which time there were many of the *Nobility* and *Commons* of *England*, who in the time of the Bishops *Finan* and *Colman*, having left their own native *Island* for the greater Convenience, either of Divine Studies or strict Life had retired thither. All whom the *Scots* kindly entertain'd, and furnished with all things necessary, and gave them freely Meat and Books to Read and Learn in. And there- after speaking of *Egbert* who was among them, he adds, that he was a good Example to his own Nation, and to the Nations of the *Picts* and *Scots* among whom he lived retiredly.

Here

Here are two considerable variations from the Latin, which Sir George cites, for there is the word *exulabat*, which signifies he was Banish'd ; and besides, *Egbert* is said by *Bede* to have set a good example, *Nationibus Scotorum sive Pictorum*, the Nations of the Scots or the Picts ; shewing, that the Nation of the Scots were under the Pictish Government, they were rather to be called Picts.

Further *Bede* does not say, that the English went to those parts, where *Finan* and *Colman* were, but that it was in their time.

Besides, Sir George observes from *Bede*, that the Monastery of *Hy*, which was the chief residence of *Colman* belong'd to *Britain*.

But *Bede* distinguishes between *Britain* and *Ireland* ; which shews, that what he says of *Egbert* was not of the time when the Nobility of England went to *Ireland*.

This appears not only in that what he says of *Egbert* is not connex'd to the other passage, but that the Nobility of England, *Secefferunt*, retired of their own accord, but *Egbert exulabat* was Banish'd.

Sir Thomas Craig not understanding when he argued against himself, so well as Sir George Mackenzie did, I shall have no need to produce out of *Nennius* and others any further proof, that the ancient Kingdom of the Scots was *Ireland*, than that Sir Thomas has afforded us.

In the Life, says he, of *Charles the Great*, see T. C. p. 79, 80. writ by an uncertain Author, but one who liv'd at that time, this following passage is found. ex frag- mentis antiquissimis histor. eccles. ca. an. 850.
At that time a Norman Fleet having enter'd *Ireland*, an Island of Scots, an innumerable multitude of Normans fell in Battle against them, and the rest made a shameful retreat.

Whence

*Defence of
the Anti-
quity.
p. 111.*

*Vid. De-
fence of the
Antiquity.
p. 100. 111.*

‘ Whence it is Manifest, that that *Island* was not
‘ only inhabited by our Countrymen, but that
‘ the Government was also in the hand of the Scots.
This is no more than our *Saxon Chronicle* a-
grees, and fully obviates all, that Sir G. M. or
others can produce for the Antiquity of their
Kingdom here.

Thus, besides what our Historiographer has
shewn of the fictitious League between *Charle-*
maign and the Scots; this shews, that if there were
any such League at that time, it could signify
nothing, it concerning only the Scots in *Ireland*
which all agree to be now part of the Dominion
of *England*. And if there had been such a
League, it was broken with a witness 59 years
after, when the *Normans* invaded *Ireland* to their
great loss and disgrace.

CHAP

The Fir
Time
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Scotl
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C H A P. VIII

The First Preparatory to Authorities of the British Times. Of Liege Homage performed by the King of Scots E. 1. when our King expressly reserved his Right to Liege Homage for the Kingdom of Scotland : Of the Grounds for it declared by him, and confessed by the People of Scotland in the 19th of his Reign. His adjudication of the Crown of Scotland, in full Parliament to Baliol. The Fealty Sworn and Homage done by him, His Rebellion, Forfeiture and Resignation of his Crown to E. 1. in the 19th of his Reign. And of the then deducing the Right of Superiority and Dominion from the British Times.

TO guard myself against the Imputation of being credulous of *British Fables*, while I reject many supported with great names among the Moderns; 'twill be requisite to shew what a King of England, and his Learned Council, of which at that time all the Judges were part, held before any one *Scotch Author* has appeared; besides *Marianus Scotus*, and the *Compilers of the Register of Mailross* within their Country, which are Authorities directly against them.

As to the nature of *Homage* in our Law, before the time of *W. 1.* I have shewn above, that *Protection* was a sufficient ground for it, tho' no Lands were held immediately as a *Fief*; and however, that *Liege Homage* much less implied the holding any Lands. If therefore, in that time
which

which leads me to enquiries backward; the King of Scotland, while he was at full Liberty paid *Liege Homage*, without any regard to Lands in England held by the *Scotch King*; and the King of England, while he accepted that, asserted his Right to have *Homage* for the *Kingdom of Scotland* as *Feudal*, whenever he should require this, it must be agreed to me, that *E. 1.* and his *Parliament* were under no necessity afterwards in his Reign, to invent Arguments from the *British* time to justify his exercising the rights of a *Superiour Lord* over the *King and Kingdom of Scotland*.

My worthy Friend Mr *Pitt*, now deservedly Keeper of the *Records* of the *Tower*; before he had that reward of his Merit in those researches, Communicated to me a well examin'd Copy of the *Scotch Kings Homage* done, and Recorded in *Latine 6. E. 1.* a true Translation of which follows.

Md. quod
In Parl.
Regis Ed.
&c;

'Md. that in a *Parliament* at *Westminster*, on the Feast day of *St Michael* in the 6th of that *Kings Reign*, in the presence of the *Bishops* of *Duresm*, *Hereford*, *Norwich*, Mr *Thomas Bee*, Prior of the *Provincial Order of Preaching Friars*, *W. de Valens* the King's Uncle, the *Earls* of *Cornwall*, *Gloster*, *Warren*, *Warwick*, and of *Carryk*, *Rob. de Tybetot*, *Anthony Beck*, Mr *Rob. de Scardeburg*, *Ralph de Sandwich*, *J. de Lovetot*, *Walter de Hop-ton*, Mr *Jeffry de Assale*, *Walter de Wynburne*, *Richard de Stapleton*, *Ralph de Hengham*, *Jeffery de Newband*, *J. de Cobham*, *W. de Brompton*, *Philip de Weleby*, *Tho. de Weyland*, *Walter de Heylynn*, *Richard de Holebrok*, *Barth. de Sudley*, *Hugh Fitz Otto*, *Patric de Cadure*, *Rob. Fitz Walter*, and of many others, came *Alexander King of Scotland*

land, the Son of Alexander late King, to the said Edward King of England at Westminster, in the said Kings Chamber, and there the said King of Scotland offer'd to the said King of England to become his Liege Man, and to do Homage to him, and he did it to him in these words.

'I Alexander King of Scotland become Liege Man of Lord Edw King of the English against all Men.

'And the said King Edward received Homage of the said King of Scotland, saving the right and claim of the said King of England and his Heirs, of Homage from the said King and his Heirs, for the Kingdom of Scotland, when he shall think fit to require it.

After this follows Fealty Sworn by the Earl of Arrrie, in the name of the King of Scotland, for the lands he held of the King of England; but as no Homage was ever sworn, the Homage then done by the King of Scots was full Liege Homage; such a Liege Subject owes his Prince, tho he held no land of him; and yet, as the Kingdom of Scotland was within the English Empire, King Edward could not receive what implied as much, without saving for his right to have it in expresse terms, whenever he should require it. However, it is enough for the present purpose to shew.

1. That the Homage was not then paid for, or on the account of any Lands held by the King of the Scots in England; but for all such Lands Fealty was Sworn to the King as Lord of those Parts. E. 1's claim of Superiority over the Kingdom of Scotland, was not an invention afterwards to colour proceedings, as Superiour Lord of Scotland. In the claim and exercise of this right, will appear, that E. 1. acted with great Justice Moderation.

G

Alex.

Oprulle
idem R.
Scotia
idem R. A
devenit
hominem
suum Li
geum defa
ctum Ho
magium.

Salvo
juris cla
mo Regi
sui inde
totum vo
luntate.

1000
1000

Rot. de
Superio-
ritate
Anglie &
in Turri
Lond.
Al. Nob.
de com-
munitate
diſt. Reg-
ni Scotie.
Veſtris
ut conſi-
lis op-
portunis.
A Town in
Scotland
upon the
Tweed.

Docu-
ments.

Alexander the third of that name King of Scots being dead, there were ſeveral Competitors for that Crown, who applied to E. 1. for Inveſtiture; K. Edward, that he might proceed with ſuch ſolemnity as the matter required, ſummoned a Parliament of the Scots; and by Juſtice Brabazon, demanded of the Biſhops and other Eccleſiaſtical Prelates, the Earls, Barons, and other Nobles of the Community of the Kingdom of Scotland, a recognition of his Right; declaring that in that, and all other things concerning the Kingdom of Scotland, he would uſe their reaſonable Counſels. They earneſtly prayed time, and tho they had ſufficient notice of the end of their meeting, yet of abundant favour they were indulg'd to the next day, when they appeared in the Church of Norwiche.

They ſtill deſired a further day to conſult with the abſent Nobility, Prelates, and Commons of Scotland; and that, as before, there might be a ſpecial Summons for recognizing the Superiority and direct Dominion over the Kingdom of Scotland, which the King ſaid was his Right. Upon this the King gave them to the 2d of June then next following, that they might in the mean while conſult with the abſent Nobility, Prelates, and Commons of the Kingdom, upon the Premises; and to deliberate, and on that day preſently to answer what he had required of them, and to exhibit and propoſe, and ſhew preſently and peremptorily, whatever Murmours, Writings, or any other Authorities they had, which might exclude him from his Right of Superiority, and his direct Dominion of Scotland, or from the exerciſe or execution of his ſaid Right.

'And might by any way of right weaken the
 'Reasons and Authorities shewn for him, and his
 'said right, by more valid and efficacious ones.
 'Protesting, that he would and was ready, as
 'the Laws would permit, to allow them to them,
 'and what Justice should perswade in the event :
 'and notified the same by the Bishop of *Durham*,
 'whom he made his *Commissioner* to the *Prelates* Ad hoc
 'and *Nobles of Scotland*, and that there might be Organum
 'a Public Instrument made of it, notified to the suum
 '*Prelates* there present before many *Witnesses*, consilium
 'upon what evident Reason and Authorities the
 'said King asserted, that the Right of *Superiority*,
 'and direct *Dominion*, over the *Kingdom of Scotland*
 'was his, and ought to belong to him, in Right
 'of the *Crown* of the *Kingdom of England*, and
 'the pre-eminence of his *Royal Dignity*. He also
 'shew'd, beginning at the time of *Brute*, and so
 'successively descending to King *Edward's* time,
 'what was writ in Ancient *Chronicles* and *Books*
 'found in divers *Monasteries* of the *Kingdoms* of
 '*England* and *Scotland*, viz, in the *Chronicles* of
 '*Marianus Scotus*, *Wm. of Malmesbury*, *Roger of*
 '*Hoveden*, *Hen. of Huntingdon*, and *Ralph de Dic-*
 'in many *Books* ; and also the *Letters Patents*
 'of *Holy Popes*, with their *Leaden Bulls* appen-
 'dant, according to the manner of the *Court*
 'of *Rome*, and other *Writings* approv'd by the
 '*Apostolic See*. And, says the *Notary*, I will in this
 'public Instrument or *Process*, write them in
 'order word for word, neither adding or taking
 'away any thing, which may change the sense
 'or pervert the meaning.
 'Then follow the *Authorities* at large, agree-
 'ing with what I shall afterwards produce.

This gave so general a satisfaction to the Kingdom of Scotland, that a Representative of that Kingdom met upon the King's Summons in a Parliament at Berwick, which began on the 15th of October.

An 1192.

(a) Per-
leges de
confue-
tud. reg-
nor. qui-
bus pri-
or.

(b) Con-
suetu u-
eriusq;
regni
Nobil. &
Prel.

On the 17th of November the King, judging by the Laws and Customes of the Kingdoms over which he presided, adjudged the Kingdom of Scotland to John Balliol, with the consent of the Nobles and Prelates of both Kingdoms, saving the Right of the Crown of England; appointed a day for Balliol to swear Fealty for the Kingdom of Scotland, and gave him a Writ of Seisin or Investiture of the Kingdom.

On the 20th of November, Balliol Swore Fealty at Norham in the French Tongue, which as the Notary certified, had this literal meaning.

Ego Johannes de Ba-
liol R. Scotor. fidem & fidelit-
ero vobis Dom. Edwarde!
Dei Gratia R. Anglie
superiori dno Rni. Scotia &
vobis fidelitatem facio de
eodem regno Scotia, quod
de vobis teneo & clamo
tenere, & fidem & fidelita-
tem vobis portabo, de vita
& Membro, & terreno ho-
nore, contra omnes homines
& fideliter recognosciam,
& vobis faciam, servitia
vobis debita de regno Sco-
tia ante dicto, sicut me
Deus adjuvet, & hac
Dei Evangelia.

I John of Balliol King
of the Scots, will be true
and faithful to you Lord
Edward! By the Grace
of God King of England
Superior Lord of the King-
dom of Scotland! and I
Fealty to you for the
same Kingdom of Scot-
land, which I hold of you
and will bear Faith and
Fidelity to you of Life
and Limb and World
Honour against all Men
and will Faithfully re-
cognize, and do to you
the Services due for
the said Kingdom
Scotland. So help me
God

Arch-
respon-
Ely,
estm,
Mare-
Scotla-
liol, L-
Clare,
sub R-
Wienc-
John A-
upon 2-
Tongue
Latin.
Domin-
Edward-
imus reg-
Johannes
scotorum
mo ligen-
tia cum
mi. eo
ad guide-
& del-
mo pro
Regibus
reditarie,
red. vestr-
e, fidem
tabo vob-
is Regib-
a, & me
bonore,

God, and these God's
Holy Gospels.

This is register'd to be in the presence of John
Archbishop of Dublin, the Bishop Anthony of Du-
rism, W. of St. Andrews, Rob. of Glasgow, W. of
Ely, and J. of Carlisle, Henry de Lacy Earl of Lin-
coln, J. de * Bogan, W. de Rasi, Patrie Earl of
March, Walter Earl of Monmouth, James Steward of
Scotland, Alexander of Ergard, Alexander of Ba-
liol, Lord of Canerem, Patrie of Graham, W. of St.
Clave, and several other great Men and Barons of
both Kingdoms; especially call'd and ask'd to be
Witnesses. On the 6th of November following, John
King of Scotland did Homage at New Castle
upon Tyne, in the Palace Hall in the French
Tongue, which the Notary thus turned into
Latin.

Note in
another
place he is
writ Wen-
gan, he was
G. J. of
Ireland.
Vid. rot
comp. E.

Domine mi, Domine
Edwarde! Superior Do-
minus regni Scotiae, Ego
Johannes de Baliol, Rex
scotorum devenio vester
fidelis et ligens, de toto regno
scotiae cum pertinentijs, &
mi eo quod appendit.
Et quidem regnum te-
neo & debeo de jure ac-
cipere pro me & hered.
et Regibus Scotiae, tenere
hereditarie, de vobis &
hered. vestris Regibus An-
gliae, fidei ac fidelitatem
habebitis & hered.
vestris Regibus Angliae, de-
bita, & membro, & ter-
ritorio honore, contra omnes

My Lord, Lord Ed-
ward! Superiour Lord
of the Kingdom of
Scotland, I John of Ba-
liol, King of the Scots,
become your Liege Man
for the whole Kingdom
of Scotland, with the Ap-
purtenances, and every
Appendage, which
Kingdom I hold, and
ought of Right and Claim
to hold Hereditarily, for
me and my Heirs Kings
of Scotland, of you and
your Heirs Kings of Eng-
land, and will bear Faith
and Fidelity to you and
your Heirs, Kings of Eng-
land,

homines qui possunt vivere aut mori.

land, of Life and Limb and Worldly Honour, against all Men who can live or dye.

This was in the presence of *John Archbishop of Dublin*, and *J. Bishop of Carlisle*, the *Earls Henry de Lacy of Lincoln*, and *J. de Waren of Surry*, *John of St John*, *Robert of Tibetot*, *Brian Fitz Alan*, *Nic. of Segrave*, *Gilbert of Tornton*, *Roger of Brabazon*, *Robert Malet*, *Robert of Hertford*, *J. of Langeton*, *Chancellor of England*, *Hugh of Cresingham*, *J. Wogan*, *J. Lovel*, *Walter of Langeton Canon of York*, and *Keeper of the Wardrobe of the King of England*, *J. of Brokensford*, and *Gilbert of Roubery*, the *Kings Clerks*, and several other *Prelates*, *Greatmen*, *Peers*, *Knights*, *Nobles*, and *People*, of both the *Kingdoms of England and Scotland*, especially called for that purpose.

Extra regnum minime traherentur.

After this, upon a complaint of a *Burgess of Berwick* against the *King of Scots*, *King Edward* sent *Justices* to do right to the Party, upon which the *King of Scots* complained, as if it were a Breach of *King Edward's* promise, that *Causes* should not be drawn out of the *Kingdom of Scotland*. However *King Edward* insists upon his right, and *Sir Roger Brabazon* his Justice there, shews, that whatever the *King* had promised the *People*, when they were more immediately under his Government, this could be of no avail now they had a *King* and ought not to deprive the *King of England* of his Right as *Superior Lord*, the *Dernier resort* to whom

• *Vin. Vaughan's rep. f. 281. Craw v. Ramsay* where *Justice Vaughan* speaking of a *Prince* holding a *Kingdom or Territory* as *Homager and Liege Man*; upon the same Ground, *Magdulf* appealed to *R. 1. ut Superiori Domino Scotia.*

was involved in the very nature of the *Superiority*.

Besides, to avoid all disputes, the King of *Scots*, formally released *King Edward* of his promises made to the People, while they were without a King.

One *Maeduf* having lodged another Appeal, tho the King of *Scots* at first appeared in *King Edward's Parliament* to answer the complaint, he having enter'd into a secret Alliance with *France*, declin'd the Justice of *King's Edward's High Court of Parliament*, sent our King a defiance, pretending to discharge himself of his Oath of *Fidelity*, and the *Homage* which he had done.

King Edward having success in a War thus raised by *France*, ordered a process to be drawn up against *Baliol* as a *Traitor*. In the process his League with *France*, and the Transactions between them are set out at large.

As the Record has it.

'Therefore the King of *England* observing so many Damages, Reproaches, Injuries, and Offences to the disherison of himself and destruction of his People, to be *Traiterously* committed against him, and the Inhabitants of his Kingdom, and not being able by reason of his Oath, by which he is bound to the conservation of the Right of the Crown of his Kingdom of *England*; further to tolerate such execrable, detestable, and nefarious offences, nor leave his rights undefended; since the said *King John* and his People under him, would not suffer themselves to be justified by the Laws; the said Kingdom, which as appears more fully above in the process, was *Federal* to him and his Ancestors *Kings of England*, for the causes aforesaid being committed; or, as is commonly said *Forfeited*; War

Commis-
so seu ut
terdicitur
foris
facto.

also having by the Counsel of the Earls, Barons, and other Peers, and Great Men, of the Kingdom of England, according to the Laws and Customs of the Kingdom of England, had been declared against the said King of Scotland and his Nation; the said King of England had extended the strength of his power against them; and so proceeding against them as Perjured Notorious Traitors, and Contumacious Rebels, and his Public Enemies; in right of his Propriety had subdued and subjugated them to the Dominion of him the King of England. Which being so, the said John King of Scotland, with the Earls, Barons, and all and singular other Nobles, Great Men, and Peers, of the said Kingdom of Scotland, with the Prelates of the Churches, returning to their duty; and, as they said, vehemently grieving for the offences they had committed, came to the said Lord the King of England, and surrendered themselves to him, and submitted themselves to his Grace and Will, yet at different places and times.

Also the said King of Scotland, openly and publicly acknowledged his Treason and offences abovementioned, and Confederacy enter'd into with the King of France; and that, contrary to the Duty of his Homage and Fealty; and for himself, his Son, and the Inhabitants of his Realm, simply and absolutely revoked the said Confederacy, as far as it had proceeded in Fact, spontaneously and perjurally. Moreover, especially and expressly renounced, all profits which might arise from thence to himself, his Son, or the Inhabitants of his Realm, and the said Kingdom of Scotland, and the Right which he had in and to the same: and his Royal Disgrace

with
Inha
gula
he to
gland
sign
Ther
subju
gland
Baron
gistra
of the
Faith
to him
and p
All v
was in
but as a
in the a
were en
Conspira
that ye
Earls, Ba
formally
as they c
by fear,
and exec
bound th
The
seems to
Charters
which ca
Atoms
Letters v
John de
Salun. Pur
w

with the Honour of *Homage* and *Fealties* of the Inhabitants of that Kingdom, and all and singular the appurtenances to the *Royal Dignity*, he to the same his Lord, the Lord the King of England freely, purely, simply, and absolutely resign'd, saving to him only Life and Limb. Therefore the said Kingdom of Scotland being subjugated to the *Dominion* of the King of England, the *Prelates* of the Churches, the *Earls*, *Barons*, and other *Nobles*, *Greatmen*, and the *Magistrates* of *Cities*, and *Boroughs*, and *Commonalties*, of the said Kingdom of Scotland, coming to the Faith and Will of the said King of England, did to him *Fealty* and *Homage*, as to their immediate and proper Lord of the Kingdom of Scotland.

All which is attested by a Public Notary, this was in the year 1293. which was the 21st of E. 1. but as appears by a Record made up by a Notary in the 24th of his Reign, the Nobility of Scotland were encouraged by France to enter into a new Conspiracy against the Crown of England; for in that year the Steward of Scotland, the Bishops, Earls, Barons, Knights, and Communities of Scotland, formally renounced all Confederacies with France, as they declared, spontaneously and not compell'd by fear, and swore to be true to King Edward; and executed Deeds or Charters, wherein they bound themselves and their Heirs to this.

The renouncing all * Confederacy with France, seems to have been by word of Mouth; the Charters of all were the same in substance, of which take an Instance in that of Sir John de la Hay.

*Atous ceans que cestes
Lettres verranton orrans
Jehan de la Haye Chiv.
Saluz. Purce que jee su
minuz a soy e al amiste*

To all those who shall see or hear these Letters, John de la Hay, Knight, sends greeting; because I am come to the

*This is at-
tested on
Record by
the Public
Notary.*

du tres noble Prince Mon-
chier sur Edw. par le grace
Dieu Roi d'Englitter sur
d'Irland, & Ducs d'Aqui-
taine. jeo promet purmoi
& mes Heirs surpein de
corse, d'Avoire & surque
conq; nous peussions encoure,
que nous ly servurons bien
& leaument, contrees
gents qe purront Vivre &
Morrir, totes les fois que
Nous serois, requis ongar-
niz de par nr sur le
Roy d'Englitterre avant
dictou ses Heirs, qe nous
leur damagesne souroge
Nous nel desforbeons a
tot Nostre poer le leur fa-
ceoms a Savoir. E acestes
choses tenir & garder jeo
oblige moi & mes Heirs,
etous mes biens: e outre jeo
ai jeo jur saints Evangelis.
En tesmoignance de quen
chose jeo ai fait faer cestes
Letters overts. Sealees de
mon seah. Don ala ville
dest. John d'Perth, le vin-
tisme secunde jour de June
l'an du regne nostre Seig-
neur le Roy d'Engleterre
avantdit vintisme quart.

the Faith, and to the
Will of the most Noble
Prince my dear Lord Ed-
ward, by the Grace of
God King of England,
Lord of Ireland, and
Duke of Aquitain. I pro-
mise for my self and
my Heirs, on pain of
Body and Goods, and
upon whatever we can
incur, that we will
serve him well and Loy-
ally against all Men, who
can live or dye, at all
times that we shall be
required, or warned on
the part of our above
said Lord the King of
England, or his Heirs;
and that we will not
know of their damage,
which we will not hin-
der with all our power,
and will acquaint them
with it.

And these things to
observe and keep, I
oblige my Self and my
Heirs, and all my Goods
and moreover, I have
Sworn upon the Holy
Evangelists. In Wit-
ness whereof I have
caused the Letters to
be made Patent, sealed
with my Seal. Given

This
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Et ex
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vice ipse
astiti sac
rogatus,
ebantur se
tribus ca
manu. p
in hanc
inferend

at the Town of *St John*
of *Perrh*, the 22d day
of *June*, in the 24th
year of the Reign of
our above-mentioned
Lord the King of Eng-
land.

This and all other Submissions and Charters,
thereupon, are thus attested by a Publick Notary.

Et ego *Andreas* quon-
dam *Gulielmus de Tangs*
Cler. Ebor. dicte sacro
sancte sedis *Aplæ publicus*
Auctoritate Notarius, qui
remissis omnibus ac singu-
lis, una cum supra scriptis
testibus diebus & locis per-
notatis interfui, eaq; sic
veri vidi, ab excellenti
Principe Domino *Edward*
Dei Gratia *R. Angliæ*
Illustri, & Domino *J. ea-*
dem gratia quondam *R.*
elector, nec non & venera-
bilibus in Christo Patri-
bus dom. Ant. perm. Divi-
ni Dunelm. & *Walt. eadem*
missionis Cor. & *Litch-*
field, Epus. nomine tamen
vice ipsius Regis *Angl.*
testis sacramenti virtu-
te rogatus, præmissa sicut
testantur seriatim in istis
tribus cartis simul su-
per manu propria scripsi
in hanc formam re-
ferendo in eisdem

And I, *Andrew* for-
merly *Wm. de Tangs*,
Clerk of *York*, by Au-
thority of the Holy A-
postolic See Notary, who
was present at all and
singular the premises,
together with the Wit-
nesses abovementioned,
and saw those things so
to be done, being re-
quired by the excel-
lent Prince, Lord *Ed-*
ward, by the Grace of
God, the Illustrious King
of *England*, and Lord
John, formerly by the
same Grace King of *Scots*,
and also by the Reve-
rend Fathers in God,
Anthony, by Divine Per-
mission Bishop of *Du-*
resme, and *Walter* by the
same Permission of *Co-*
ventry and *Litchfield*, in
the name, and in the
stead of the said Lord
King *Edward*, by vir-
tue

omnium & singular. litera-
 rum tam semper fidelitat.
 Epor. Ab. Prior Monialium
 & alior. ecclesiar. Pralator,
 quam confector super fide-
 litatibus & Homagijs
 Nob. viror. Com. Coitat.
 Villarum & al. Procerum
 & Regni Incolar. Regni
 Scotia, ad fidem & volun-
 tatem dicti Domini Regis
 Anglie ventientium ut
 pramittitur, & fidelitat.
 & Homag. sibi facientium,
 sigillis suspendentibus con-
 signat. De verbo ad verbum
 nihil addit vel minuens
 quod sensum mutaret vel
 corrump. intellectum ad-
 perat. pramitt. memoriam
 transcripsi, & cum de Rob.
 cum dno. Rob. de Oibalde-
 nyke Capellano, & Waltero
 de Pontefracto Cler.
 grad. literar. tenores dili-
 genter examinavi.

rue of the Oath which
 I had taken, have with
 my own Hand writ the
 premises, in order as they
 were done in 30 mem-
 branes sewed together,
 and have brought them
 into this form, inserting
 in the same the forms
 of all and singular Let-
 ters, as well made up-
 on the Fealties of the
 Bishops, Abbots, Priors,
 Monks, and other Pre-
 lates of Churches, as
 upon the Fealties and
 Homages of Noblemen,
 Earls, Barons, Knights,
 Commonalties of Towns,
 and other Peers, and In-
 habitants of the Kingdom
 of Scotland, coming, as
 is above said, to the Faith
 and Will of the said
 Lord the King of Eng-
 land, and doing Feal-
 ties and Homage to him,
 sign'd with their Seals
 hanging thereto. For
 the perpetual memory
 of the premises, I have
 transcrib'd them word
 for word, neither ad-
 ding nor diminishing
 any thing which would
 change the Sence, or
 pervert the Meaning,

and

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and have diligently examin'd the Tenors of the said *Letters*, with Mr *Robert* of *Osbaldewyke* Chaplain, and *Walter* of *Pomfret* Clerk.

The faithful Historian *Walsingham* of this very time, placing that in the year 1297, which is no *Walsingham* material difference from the Records says, 'the ham f. 67: King sent thither *Anthony* Bishop of *Durham*, with full *Regal Power*, to whom within the time prescrib'd, came the King of *Scots* and his *Greatmen*: who, after many and various *Treaties*, nakedly and purely *Subjected* themselves, and the *Kingdom* of *Scotland*, to the Kings Will. For observing which *Submission*, *John* sent his Son an *Hostage*, and executed *Letters* in the *French Tongue*, which *Walsingham* exhibits, containing an absolute resignation of the *Crown* of *Scotland*. This appears to have been with the consent of the *States* of the *Kingdom* of *Scotland*.

Here it may be no small diversion to observe, what an *Artificial* turn *Sir Thomas* Craig, as he thinks, gives this, to furnish an *Argument* against the *Right of Homage* for the *Kingdom* of *Scotland*.

'Tho, says he, we should grant, what they will never be able to make out by any probable argument, that the *Kingdom* of *Scotland* was a *Free* of Homage

Liege of *England*, and that the *King* of *England* had before that time, been *Liege Lord* of *Scotland*; yet I will make it plainly appear, that that *Homage* and *Superiority* was destroyed by *Edward*. Then the *King* of *England* was, they say, *Superior Lord* of *Scotland*, and *Baliol* his *Vassal* for the same, if the *Gods* will have it so.

'But *Baliol*, who was a *Cowardly Man*, being deserted by his *Subjects*, and unable to maintain

tain the War, he came to the *King of England*
 at *Brechin*, and resigned all the Right he had to
 the Crown of *Scotland*, with the *Homage* of his
Scots, into the hands of *Edward* his Lord, as
Liege Lord, which is Recorded by all the Writers
 of both Nations.

How many of the *Scots* have been so fair as to
 own what the Record proves, that 'twas with
 the consent of that Nation, I cannot say; but for
 certain *Sir Thomas* is far from owning, this Truth.

To proceed with his profound Argument.

This *Resignation* being made, *Edward* was no
 more Superior or *Liege Lord* of *Scotland*, but
 Lord Proprietor of all *Scotland*, no less than he
 was of *England*.

This is admirable *Tory Doctrine*, but it must be
 agreed, that the *King of England* was no more
 Proprietor of *Scotland* after that *Resignation*, than
 he was before, unless the *King of Scots* was the
 Immediate Proprietor before, which no honest
Scots will say; for the *Dominion* of the Prince does
 not interfere with the Property of the Subject.
 However, *Sir Thomas* by his admirable skill in
 the Feudal Law, will prove the *King of England*
 by that *Resignation* became Lord Proprietor of all
Scotland. For, says he, then there was no *Vas-*
sal for the Kingdom of *Scotland*; but the Pro-
 perty was consolidate with the Superiority; which
 consolidation Lawyers call *confusio Dominii uti-*
lis cum directo. Is not this wonderful in so
 great a Master, that he should not be able to dis-
 tinguish between *Dominion* and Property? And
 tho the rule which he cites is only of *Domi-*
nion, should infer, that by a confusion of the direct
Dominion with the usufructuary, the absolute Pro-
 perty is acquired to the Superiour Lord? when he

only

only becomes the *immediate Lord*, to them who before were under a *mesne Lord*.

And, indeed, when he observes how E. 1. understood this matter, he shews, that the question of *Property* was never thought of: For Sir Thomas Subjoyns; 'so Edward himself says, that by this Resignation he was legally constituted Possessor of the full *Dominion*; that all the Scots were his Subjects, and performed *Faith* and *Homage* to him, as to their immediate *Lord*. p. 373

Very good! Does this look like a proof, that the *Homage* or *Superiority* was destroyed, because the King of England was the immediate Superior to all the Subjects of Scotland?

But, says Sir Thomas.

'If by this Resignation the *Property* and profitable *Dominion* be conjoyn'd with the *Superiority*, it follows of necessity, that the *Superiority* is extinguished; for there can be no Superior or Lord, where there is not a *Vassal* or Inferiour; for these are correlate, and if one be wanting, the other must of necessity fall.

This mighty Argument by this time appears, to depend upon the false term, *Property*; and indeed, if the King were the Proprietor of all, there could be no state of *Vassalage* besides *Villeinage*: but that the King of England could not be Superior Lord of Scotland, because they had no other Lord, is a gross inconsequence.

And yet upon this fallacious or weak way of arguing, Sir Thomas concludes.

'Therefore what is principally urg'd for the confirmation of this *Homage*, by our Neighbours, is the chief thing that subverts it, and if they confess that to be a true and lawful *Resignation*, it is not needful to confess any *Superiority* or
Pro-

Property afterwards, except they can make it appear, that the Kingdom of Scotland was given *de novo* by the Kings of England; which no Man who hath not declared open War against the Truth will, as I believe, attempt; for there's no Englishman who can for shame assert this *Homage*, or affirm that Scotland was given after that to be held in Fee of England.

Notwithstanding all that Sir Thomas has here urged with so much assurance, I may appeal to all Lovers of Truth.

1. Whether duely rejecting the false term (*Property*) the Resignation of the Crown of Scotland, having been true and lawful, with the full consent of the Subjects, it will not be needful for them to confess the *Superiority*; not over their King, because they would have none till given them from hence, but over the People of that Kingdom?

2. Whether there can be any cause of shame, in asserting that *Investitures* from our Kings, to Men and their Heirs, upon *Homage* done for the Kingdom of Scotland, were Grants *de novo* of that Kingdom; to be held in Fee of the Crown of England?

3. Whether Edward Baliol the Son of John, and James the first, had not such Grants in Fee?

Whether since our Edward the 1st had the Kingdom of Scotland *pleno jure*, there has been any event of War, Transaction, or Circumstance, between the two Nations, which can reasonably be thought to amount to a discharge of the Subjection of the People of Scotland; and that immediate, if we suppose that no King of Scotland received *Investiture* from hence, after the *Resignation*, so full, and with such a National consent, as the Record made of it, evinces.

C H A P. IX.

The second preparatory to the account of the British Times. The Pope's Letter 29 E. I. to dissuade our King from the exercise of his Superiority and Sovereignty, with short Remarks upon it. The Foundation laid by the King and Parliament of England, for Homage for the Kingdom of Scotland, from within the British Times.

[Ho' Baliol was adjudged to have forfeited, Edward exacted no more from the Scots in his ancient right as Superior Lord, and did not assume the Stile of King of Scotland, being willing to give them a King. And in Fact, his Assistance occasioned Bruce's retaining the Crown, and this is owned by T. C. himself, who agrees that, "upon Ed-
 ward's March into Scotland, the Scots had again taken Arms, most of the Nobility of Scotland joyned him; and among others, Bruce; which did mightily encrease his Army.
 He farther owns, that they who opposed King Edward were routed, and that "Bruce is Branded with the infamy of that Battle, for having brought great Forces into the Field, and Fought with much Bravery, in Favour of King Ed-
 ward.

p. 376.

p. 378.

Bruce, as appears by *Walsingham*, a most An. 1306
 faithful Historian was not King of Scots, till 34 E. I.
 the last Year of Edward I. which deprived
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that *Victorious King* of the opportunity of
nishing, *Bruce* for his perfidy.

Walsing-
ham, l. 91,

It must be agreed, that, tho' he had held
with our *King*, and desired the Kingdom, as
his Gift; he having in *Dumfre's Church*,
the *Historian* says, *Sacrilegiously Slayn Cumyn*
chief Man of *Scotland*, who would not con-
to his Treachery, while *King Edward's* Jus-
were sitting in the *Castle*, in time of full Peace
set up for *King*, without staying to know *King*
Edward's pleasure.

'Tis certain, he continued *King of Scotland*
by foul practice, with other Subjects of *England*
for in the 16th. of E. II. *Andrew de Here*
who as the Record has it, had been made *Earl*
of *Carlisle*, for the Valour and Loyalty whi-
he had shewn, in ayding and maintaining
Rights of that *King*, and of his Crown, and
ple, against all the *King's* Enemies, and by Na-
against *Robert de Brus*, and his other enemies
Scotland; was Trayterously, by writing and
allyed to the said *Robert de Brus*, to maintain
to be *King of Scotland*, in reverse to the *King's*
Intention in giving him that Honour. Be-
found Guilty of this Treason, it was adjud-
that he be Degraded, and that he and
Heirs for ever, lose the Name of *Earl*. Th-
after a more particular recital of the *Facts*,
had the usual Judgment of High Treason
appears, that the agreement between him
Bruce was, that he should maintain the
dom of *Scotland* to *Bruce*, and his Heirs;

(a) Rot. claus. 16. E. II. m. 26. d. in Scac. Rec.
Inter recorda in Cur. recept. Scaccarij sub custod. T.
Cam. Rot. 34. (b) En la reverse de la intencion

that six Persons to be Named by him, and
by Bruce, should order all the great Affairs
of England and Scotland.

Of the like nature must have been the Con-
spiracy of Edmund Earl of Kent, who 4 .E. III.
was by Judgment of his Peers Attainted of
High Treason, upon an intercepted Letter and
his Confession, that " he had agreed with
some People Beyond Sea, for bringing an Ar-
med Power into England, by the way of
Scotland, to the destruction of the King and
the great Men, who assisted him : Some both
of Scotland and England were consenting to
such Sedition.

Rot. Rom.
4. E. III.
m. 5. C
Rotclaus.
E. 3. m.
38. d.

Thus Great Men here, of ungoverned Am-
bition, promoted Troubles from Scotland ; as
Bruce, who set up to be an Independent King
of Scotland, flattered the Ambition of the Eng-
lish Earl of Carlisle, and such others here, as
were deluded with hopes of having the prin-
cipal Administration of the Affairs of both
Kingdoms.

Seditio-
bus in-
dis.

But I would gladly know, upon Sir T. C's
own avowed Principles, what Right the Choice
of the People, then under the immediate Go-
vernment of the King of England, could, con-
trary to their Oaths of Allegiance, confer on
Bruce, who could not pretend to a Divine Right of
Succession ? That plainly, as far as such a Right
goes, being with Baliol, and his Descendants
claiming under an elder Sister. Upon which
account, the Crown of Scotland, not being par-
tible, was by the King of England, and the
Nobility of both Kingdoms, adjudged to Baliol,
according to the Laws of both Kingdoms.

Walsingham de
An. 1301.

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But the thred of History, and subject Matter oblige me to go a little back to the 29th. of our King Edward's Reign.

Then, as Walsingham rightly observes,

Scoti cognoscentes Romae omnia venalia, donis Dominum Papam uberimis ditarunt, petentes ab eo consilium pariter & auxilium contra Dominum suum Regem Angliae.

The Scots knowing that all things were to be Sold at Rome, enriched the Lord the Pope, with very large Gifts, asking from him both Counsel and Aid, against their Lord the King of England.

Sir T. C.
p. 389.

They having prepared the Covetous Father, to give apostolic Sanction, to any Legends they should impose, send their Traditions to be Stampd at the Mint of such Impositions. Then came that Letter from the Pope, by which Sir T. C. supposes the Decision of the whole Contraversy, will be manifest.

Before the considering which, I cannot but observe, that the Traditions, which were sent to Rome, to be Stampd into current Truths, met with a fatal Objection, that they were not attested by the States of the Kingdom of Scotland, who neither did, nor could legally meet without King Edward's Summons, and therefore it is to be looked upon only, as the act of Rebels, corrupted with that French Mony, which enabled them to Bribe a See flowing with Corruption.

Sir T. C.
p. 380.

Sir T. C. who would have all pass for Gospel, which came from a Pope, on the side of the Scots, says,

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"The Pope proves by very strong Arguments, that the whole War was unlawfully undertaken; and that Edward did unjustly use the Scots, upon the account of that Superiority, which he did falsely conceive he had a Right to over their Kingdom.

With Sir T. C. let's hear what Boniface the 8th. has to say for Scotland.

"He alledges, that the Kingdom of Scotland *Ser. T. C.* did not belong to any other but the See of *p. 381.* Rome; nor never was a Fee of England.

Sir Thomas Craig owns, that he brings no proof for this Proposition, as being a Negative; but will have it, that he has "not only a manifest presumption of Law, seeing the Presumption is always reckoned, on the side of Liberty, but Notoriety and perpetual Custom.

'Tis pleasant to see the force of Prejudice, that this Learned Man should not discern an Affirmation here; that, Scotland was a Fee of the Roman See: But, it seems, Ecclesiastical Slavery Liberty, and Legal Liberty Slavery.

The Notoriety of Fact, and perpetual Custom, I will not stay in this place to examine; but undertake soon to shew them on the side of the Superiority of the Crown of England, over that of Scotland. And must needs Smile to observe, that the infallible See should take a step from the earliest times, to those of Henry and Edward I.

Sir T. C. assures us, "the Pope proves this matter, plainly by Deeds of Edward himself and Henry his Father; for when Alexander the third, King of Scots, sent Auxiliary Forces to Henry III. in his War, with Simon de Montfort, he Demanded a Caveat, that they
"should

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" should not be looked on as sent on the
" count of any Subjection, or Right, which
" *Henry* did also testify by his Letters Patents, viz.
" That he had received those Auxiliary Troops
" not as any Assistance, any way due to him
" but as a special Favour from his Neighbouring
" Prince.

" Certainly, says Sir T. C. this Argument
" the Pope's, does utterly destroy the Homage
" and he thinks *Henry* could not declare that
" Scotland owed him no Service, in more ex-
" press Terms.

Sir T. C. would not here consider his own
Objection; that this was only the Declaration
of the Prince, in relation to the Right of the
Crown, which he alone could not bind. He
sides,

I. This was at a time, when it must be
agreed what the King did, could be of no more
avail, than the Act of their King, in the Reign
of H. II. while in Prison; if it stood single
and was not according to what was his Duty
before.

II. The Service which the King of Scotland
owed the King of England, was by reason
his having the Crown of the Kingdom; the Power
of which the King of Scots was bound to maintain
against Foreign Force; but the King of
England being then divided, he might possibly
think himself at liberty to chuse his side.

However, the King in those circumstances
might be glad to have his assistance upon
Terms

III.

III. The third, and a *most Powerful Argument* is, from a supposed qualification in the summons to the King of *Scots*, to attend at the Coronation of *E. I.* but as the Chancellor must not have varied from the ancient Form, that there was any variation stands in need of better Authority than the affirmation of the Pope or any of their Historians. Especially, unless the *Scots* will be concluded by what their Historians say of the *Succession* of *Robert the Third*.

IV. The fourth Argument, thought to be still harder upon *Edward*, relates to the Demand, and Performance of *Homage* 6. *E. I.* When either the Pope, says, "the King of *Scots* appeared before *Edward* in Person, to perform the usual *Homage*, for *Tyndal* and *Penrith*, which are both in *England*; but declared he neither owed nor would perform any *Homage*, or *Fidelity* for the Kingdom of *Scotland*; and that *Edward* himself did then agree to what was spoken.

This of *Tyndal* and *Penrith* was perfectly a new invention, and shews that they, who informed the *Holy Father*, knew nothing of the ancient History, or the Claims made by former Kings of *Scotland*, to *Honours* in *England*. But that the whole is meer Fiction, appears by the Record above, of *Homage*, then freely offered and done, without relation to any Lands; and of King *Edward's* saving his Right to have it expressly for the Kingdom, when he should think fit to Demand it.

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The next instance, Sir T. C. thinks is stronger still, "that Edward I. solicited a Marriage between the Heiress of the Crown of Scotland and his Son; and whereas if he had been Liege Lord of Scotland, the Wardship would have fallen to him; the Nobles of Scotland chose Guardians for her, till a dispensation could be obtained from the Pope; for Edward the Son, and she were in the second and third degrees of Consanguinity.

p. 389.

"And King Edward, by his Letters-Patents declared, that in case the Marriage should not be agreed on by the default of the Nobility, or otherwise, he should leave the Kingdom of Scotland Free, and subject to no Man for ever; and if there happened to be Children by that Marriage, that he would leave the Kingdom in its antient State, and restore it, as he received it: That it should retain the Name and Dignity of a Kingdom as before, both in enjoying its own Laws, appointing Officers of State, holding of Parliaments, and deciding Causes within the Kingdom; and that none of the Inhabitants should be obliged to go out of the same for Judgment.

Upon this Sir T. C. says, "now none can call Parliaments, but those who have the Right of Majesty; so that, if this proviso, granted by Edward, do not put this Question, about the Homage, out of all controversy, I know not what to say.

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But I shall shew that all this is built upon gross mistakes, if the chief part of it be not sheer Fiction.

I. Here is a supposal that the Act of E. I. whatever it was, bound the Right of the Crown, which Sir T. C. will not allow in the case of their King.

II. The permission of E. I. that the States of the Kingdom of Scotland, should act in the choice of Guardians to a Princess, at such a distance from the English Court, argued no more than a Tenderness and Complement to the fair Sex, in not obliging her to Travel hither: And the Treating with the States of the Kingdom of Scotland, was no more a waiver of his Right of Superiority, than his Treating in Parliament with his own Subjects, imply'd his ceasing to act as King of England.

III. Besides that King Edward's Declaration a Charter, passed without the consent of an English Parliament, could not free Scotland from its Subjection to the Crown of England: It is not to be believed upon the Authorities of the Pope and Sir T. C. which I have so plainly disprov'd by Record, that this King offered to leave Scotland free, tho' the Marriage should take effect: which had been a means to dissuade the Scots from agreeing to the Marriage, when the Offers which were really made, were to induce them to Consent.

IV. Even Sir T. C. urges nothing from the
 H Heire's

Heiress of his *feudal Tenant* in Marriage; being, it seems, Conscious that the nearness of Relation obstructed the Marrying Her to his Son, without a Dispensation, which might not be obtained if opposed by the *Scots*.

V. By *Fleta*, a Law-Book of great authority, writ in the time of E. I. we are told the Wardship and Marriage do not follow every *Homage*; and however, seisin of the *Homage*, was a seisin of all the Incidents.

That of which Sir T. C. is most proud, argues great want of understanding, or something else, if that Marriage had taken effect; for is it not obvious that if there had been Issue, such Issue would have been *King* or *Queen* of *Scotland*; and the *Parliaments* there must have been held by them, or by *Commissioners* appointed by them: And therefore, tho' in the event, *Scotland* had retained its *Seate*, as before, in holding *Parliaments*; how could a *Parliament* holden under the *King* of *Scots*, who would at the same time have been *King* of *England*, infer any more than that as a *King* could not do *Homage* to himself; it would be suspended while the same Person was *King* of both Nations? but could the offer of this amount to the least shadow of a waiver of the ancient Right?

VI. "The *c Pope's* sixth argument is, that this *Margaret* being Dead, and a Controversy

(a) *Fleta*, lib. 3. c. 16. *Ad omne Homagium non sequitur Custodia & Maritragium.* (b) *vid. Bevil's case Inf. 6.* (c) Sir T. C. p. 385.

arising among the *Nobility*, about the Suc-
 cession to the Crown, the greatest part were
 willing that the King of *England* should be
 Arbitrator; and thereupon he came to the
 Borders with an Army, to support those of
 his own *Faction*; and the rest being called to-
 gether, were somewhat afraid, and not trust-
 ing to the King's bare Word, that their Obe-
 dience should be no ways prejudicial to the
 Kingdom, nor infer any *Servitude*, they would
 not come over the Borders into his Presence,
 except he did first assure them by his Let-
 ters Patent, that they were not required to
 do the same as being there unto obliged, but
 out of a special Favour; and that the Liber-
 ties of the Kingdom should suffer no preju-
 dice thereby. And these Letters Patent, says
 Sir T. C. were then produced before the
 Pope.

That this doughty Argument made up from
 supposed verbal Declarations, and a Charter,
 is meer fiction, appears by the Record above,
 which shows that King Edward at large, asser-
 ted his *Superiority* and *direct Dominion*, before he
 proceeded to give Judgment; and the States
 of that Kingdom of Scotland met him to that
 end, in pursuance of the avowed Right of
Superiority and *direct Dominion*; against which
 they could offer nothing, after taking full time
 to consult their Principals, and how much so-
 ever they might impose upon Holy Father's
 credulity; If E. I. had made any such Decla-
 ration, the States of Scotland need not have ta-
 ken any time to invent Objections, against
 King Edward's Claim of Right.

And if they did make any upon first coming to E. I. they manifestly waived them, when they Concurred with him in adjudging the Crown to *Baliol*.

But the *Pope* says, " he had *unjustly* pronounced Sentence for *Baliol* ; that some innovations were thereupon made by him contrary to the usual custom ; and all these things were extorted by violence and fear which may befall a constant Man.

That this was not so, and that it was with the consent of the *States of Scotland*, has appeared above.

Sir T. C. says the Sentence in favour of *Baliol* was given contrary to all Law and Equity. But as Sir T. C. does not oblige us with the Discovery wherein, this is to be placed among the rest of his unproved Assertions.

VII. The 7th. Argument is Founded upon the supposed immunity of the *Scotch Church*, in relation to the *Holy See* ; for which I am not concerned, and to the *See of York*, which, as will appear, is not the true Question.

And this is all that the *Scotch*, or rather *French* Coin could perswade *Pope Boniface* to endeavour to obtrude upon King *Edward*, upon pain of Damnation.

But as Sir T. C. tho' he seldom gives us any true Story, rightly says, "*Edward* being nothing afraid of the *Pope's* Threats, Swore by the Blood of God, for *Sion's* sake I will not hold my Peace, and for *Jerusalem* I will be at Rest (alluding to those Words, *Sion* and *Jerusalem* in the *Pope's* message) while there is Breath in my Nostrils ; but will Defend

p. 388. vid.
Walling-
ham.

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"my Right, which is known to all the World,
"to the utmost of my Power.

That E. I. did assert this Right to the last,
has appeared above; but at that time, to shew
that he would not act in an Affair of such concern
to the People of England, without their Advice,
he Summoned a Parliament for the declaring
his Right; and Answered the Pope's Letter,
as the Historian assures us,

Ex deliberato apud Lin-
colniam convocato consi-
lio.

From a deliberate
Council called toge-
ther at Lincoln.

Walsing-
ham, p. 18.

So that his Answer was manifestly by the
advice of Parliament.

The Pope as, has appeared above, threatned the
King very hard, if he persisted in his supposed
Ulurpation over St. Peter's Patrimony; yet
neither Prince, nor People believed they ought
to give up the right of the Crown, for any
vain threat of Hell-Fire.

In answer to the Pope, the Parliament writ,
as it were with greater Authority than their
King; they said, "we know, that from the first
"Institution of the Kingdom of England, the
"Kings of That Kingdom, as well in the time
"of the Britons, as of the English, had the Supe-
"rior and direct Dominion of the Kingdom of
"Scotland in Possession, or were Heads of Su-
"periority, and for right or justice to Scotland in
"Successive times.

Rot. claus.
29 E. I.
Scimus
quod, &c.

*Capitanei
Superiori-
tatis & re-
situdini.

Then, mentioning the Pope's impertinent
Claim, as if Scotland were the Churches Fee,
they add.

H 3

But

" But, in truth, the Kingdom of Scotland
 " has been *feudal* to the progenitors of our said
 " King, Kings of England, and to himself, from
 " of old; and they tell the Pope very roundly,
 they will not suffer the King to answer in this
 matter judicially before him, the so answering
 in which, and other temporal matters, would
 manifestly tend to the *Dissolution* of the Rights
 of the Crown of the Kingdom.

The King, like an obedient Son, as if he
 were ready to answer, opens the merits of his
 Cause to the Pope; & solemnly assures the Pope,
 " That his Ancestors and Predecessors Kings of
 " England, by a right of superiority and direct
 " Dominion, from the most ancient Times back-
 " wards, were over the Kingdom of Scotland, and
 " its Kings, in Temporals and matters annexed
 " to them; and received from those Kings for
 " the Kingdom of Scotland, and from what
 Peers of that Kingdom he would, *liege Homage*,
 and Oaths of Fidelity.

From this general assertion, he comes to
 particulars, and lays the Foundation of the Bri-
 tish Kingdom in Brute. That he gave part, since cal-
 led Albany to Albanact, who was Slain by Ham-
 ber King of the Huns, who flying from Brute's
 Elder Son Lo crine, was Drowned in the River
 which bears his Name; and by the Death of
 Albanact the Kingdom of Albany returned to Lo-
 crine.

- (a) Quinimo regnum Scotiae progenitoribus dicti Regis ac
 Regibus Anglia, atq; sibi feudale extitit ab antiquo.
 (b) Cederent manifestè in exheredationem juris coronæ
 regni Angliæ. (c) Lit. Mis. ad Cur. Rom. Super jure Regi
 competente in regno Scotia. Rot. Claus. 29 E. I. m. 10.

C H A P.

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C H A P. X.

Short Observations of the History of Brute, and the Writers of the British Affairs: Whence Britany and Albany had their Names. And of the British Monarchy under the first Christian King.

SIR Thomas having, as I observed above, Sir T. C. admitted, that if the Story of Brute and his Sons was true, by the falling of Scotland p. 11. his to the eldest, who was King of Britain, the Fee was consolidated. 'Tis much he should wonder how then Superiority could continue; since it is obvious, that, then no King could have Dominion in Scotland, but from or under the possessors of the Crown, to which that was Consolidated or Re-united. Sup. c. 6.

But Sir Thomas, who would have all their conjectures taken upon trust, rejects all our ancient Authorities of the Story of Brute and very great Men among us too easily give up the British Histories. The old Britons, as they upon all occasion evidenced invincible Spirits, have been no less remarkable for Sincerity, and love of Truth; and therefore 'tis very unequal to tax all their ancient Monuments with Forgery, which are not Supported with the Testimony of Foreign Authors, or their Enemies the Saxons.

The chief Reason which has made lying Polydore, and others, derogate from their Credit, has been their obstinate opposing the Romish

Superstitions, against which there were numbers of *Martyrs* among them, soon after the coming of the *Romish Apostle, Austin the Monk*.

Bede, a true Bigot for the *See of Rome*; for his placing *Salvation* in a right observing the time of *Easter*, and other such weighty matters, has been received as an *Oracle*, while all the *Culdees*, * or Preachers among the *Caledonian Britons*, and grave Men without Guile in other parts, have been despised. Yet whoever examines *Bede*, and other *Saxon Writers*, will find, that they pass over most things but what relate to that Cause, or Kingdom for which they Write.

* Vid. Sel-
deni pref.
ad Script.
deccm.

Thus *Bede*, being of the *Northbarchymbrian Kingdom*, gives very little account of any other, except of the *Cantian*, where their *St. Austine* was first received: And small care is taken to preserve Memorials of the generality of the actions of the *Danish Kings*; but of their Successions and Laws before their *Cnut* obtained the *British Monarchy*, there is nothing to be found.

Bishop of W's Pref. A learned Critic in his Country Tongue assures us, that the *Britons* have this to say, which few can say elsewhere, That they still keep the same Language which was first Spoken in the Country.

Which being so, 'tis not to be thought that they should want as certain Monuments of Antiquity, as we have by old Inscriptions, of the Times when the *Romans* Governed here.

In the Names of Persons and Places, a Man skillful in the Language cannot be deceived. Therefore I cannot but give credit to Mr. *H. Lbnyd*, who says,

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" Altho' *Cæsar* call the *Britains* *duxes*
 " that is, Born in the same Country where they
 " Dwell. And *Diodorus Siculus* sayeth they were
 " from the *Beginning*; yet do I believe that
 " *Brutus* came into *Britain*, with his Train of
 " *Trojans*, and there took upon him the Govern-
 " ment of the antient Inhabitants, and of his
 " own Men; and therefore were called *Brit-*
 " *ains*; for our Country Men unto this Day
 " do call a *Britaine Britum*, which Word com-
 " eth not from the antient Name of the Island
 " *Prydane*, but from *Brutus* the King. And all
 " Historians call the *Britains* in the plural Num-
 " ber *Britanni*, and *Brython*, which Words are
 " derived from the Name *Brutus*; for in de-
 " rivation of Words, our Country Men often
 " turn v into y.

'Tis no less to be believed that the Country
 which has since obtained the Name of *Scotland*,
 was called *Albany*, from their King *Albanact*,
 which Sir *George Macbenzie* agrees. Indeed
 their excellent Poet *Buchanan*, contends that
 " *Albion* or *Albium*, the Name of the Island
 " as coming from *White*, has stuck to *Scotland*,
 " as to its Natural Soil.

But how can it be imagin'd that the Name
 of the *Island* of *Britain*, shou'd come to have
 been appropriated to *Scotland*?

To confute this wild imagination Mr. *Lbuid*
 rightly observes, that this *Island* was known

(a) *Defence of the Antiquity*, p. 5. (b) *Buchanan hist.*
 f. 3. b. 4. *Nomen insule ab albo Ductum, sive Albion sive*
Albinum sit adhuc in Scotia velut Naturale solo persi-
naciter adhaeret.

" to *Aristotle* by the Name of *Albion*, before
 " the Name could have been taken from the
 " *Roman* Language, and even before the *Scotch*
 " Fable of *King Fergus* the first. For the truth
 of the Story of *Brute*, I might refer to several
 ancient Mss. in the *Cotton Library*, and to the
 Name which the old *Romans* gave that part
 of *England*, of which *London* was the *Me-*
tropolis; this in the *Confessor's Law*, is said to
 have been Built and Governed like the ancient
Troy; as the Inhabitants of those parts
 were *Trinobantes*.

Of the an- I cannot here pass by the inconclusiveness
 tiquity of of the late Bishop of *Worster's* argument, as if
 London. *London* was no City in *Julius Caesar's* time, not
 being mentioned among the *Civitates*, which
 sent Embassadors to *Caesar*; that Great and
 Learned Man, Bishop *Stillingfleet*, not having
 observ'd that *Caesar* uses the Word *Civitas*, in
 a more comprehensive Sense, for all the com-
 munity under a distinct King or other Go-
 vernour.

vid. Pref.
 Bi. of W's.
 to Hist.

Nennius, who, as a learned Bishop observes
 from that Author himself, was employed to
 Write a History of our Nation, speaks of a
 Tradition, as if the Name of *Britain* came
 from one *Brute*; but that it came from one *Brute*
Nennius affirmed he had seen express Autho-
 rities: * In *Annalibus Romanorum Sic Scriptum*
 est, 'tis so writ in the *Annals* of the *Romans*.

* *Nennius*
 ed. per.
 Doctorem
 Gale. f. 98.

These *Annals* might have been composed
 by some of their Learned Men that were here,
 of the antiquity of which, *Nennius* might well
 be satisfied. That no such are now to be found,
 no Man can take to be any objection, consider-
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ing the common Fate of Writings and Records.

The Register of *Mailros* has a very remarkable passage, which shews the Story of *Brute* to have been received without any hesitation in the Year 1241, 25 H. III. occurrences of that time being mentioned, 'tis added,

Cron. de Mailros de An. 1241.

*Walenses qui & reli-
quia Britonum qui a
diebus Bruti qui primus
eorum Princeps erat, Prin-
cipem super se de gente sua
habuerunt, sub quo & per
quem suas causas termi-
nabant, modo coguntur
Londonias properare ibi-
dem ad arbitrium Anglor.
res determinare.*

The *Welsh*, who al-
so are the remains of
the *Britons*; who from
the Days of *Brute*, who
was their Prince, had
over them a Prince of
their own Nation; un-
der and by whom they
ended their Causes;
now are compelled to
hasten to *London*, there
to determine them, at
the will and pleasure of
the *English*.

Long before this *Simon of Durham* speaking of *S. Dun. f.*
Action between *Cenwald* King of the *West-sax.* 181. He be-
ans and the *Britons*, says, "the Off-spring of gan his
" *Brute* had an incurable Blow. reign An.
643.

I cannot here omit what *Nennius* says of
King *Lucius*, with farther authority concerning
the *British Monarchy* in the second Century af-
ter our Saviour.

Anno. Incarn. CLXIV.
Lucius Britannicus Rex
cum universis Regulis so-
litis Britanniae, Baptis-

In the Year of the
Incarnation 164, *Lu-*
cius the *Britanick King*,
with all the little or

mum Susceperunt, Missa legatione ab Imperatoribus Romanorum, & a Papa Romano Euaristo. under Kings of all Britany; an Embassy having been sent from the Roman Emperours, and from Pope Euarist, received Baptism.

This Pope Euarist, as an old Briton calls him, was Pope Eleutherius, who might take this opportunity of Writing to King Lucius about Religion; when Antoninus and Lucius Verus, who then were Emperours, sent an Embassy about Civil Matters.

The different accounts of the time when King Lucius, by the advice of his great Council, writ to the Pope, to be instructed in Laws fit to Govern this Empire; upon which he received the Answer transmitted down to us, being according to different computations, can be of no more weight, than several other trivial Objections, which I need not stand here to remove.

The Pope in that Letter, which could be no Forgery, Writes back.

vid. Leges Ed. Conf. & Prid In-rod. p 282. "Ye have the New and Old Testament; out of them, through God's Grace, by the advice of the Realm, and by the same through God's Permission, Rule your Kingdom of Britain, for in that Kingdom you are God's Viceregents."

This, which was before the Pope claimed the Government as Christ's Vicar, shews manifestly that King Lucius was God's Viceregent, throughout the Kingdom of Britain.

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In after-times, when the authority of the *Pope* was received as universal, this was improved into a concession from him; that the *Monarchy* should be entire as far as the limits of the *British Kingdom* then reached.

This was before ever the *Picts* had got any considerable Footing here: For *Severus*, who ^{Prid's Introduction An. 208.} Built the famous *Picts* Wall, to stop their Incursions, came not hither till the Year, 208. nor as has appeared were they Formidable to the *Britons* before the Year 382.

Temp
Maximi.

But what were in the *Confessor's* time, held to have been the Bounds of the *British Empire*. from the time of the *Pope's* Letter, till within the *Confessor's* Reign, and remaining to 4 W 1. will appear by this passage in the account of the *Confessor's* Laws, confirmed 4 W. 1.

* *Univerſa vero terra & tota, & inſula omnes uſq; Norwegiam & Daciam, pertinent ad coronam regni ejus, & ſunt de appendicijs & dignitatibus Regis, & una Monarchia eſt & Unum regnum Britannia. Mada autem vocatur Anglorum; Tales enim metas & fines, ut ſupradicta ſunt, conſtituit & impoſuit coronæ Regni Dominus Eleutherius Papa, qui Anno 67. poſt paſſionem Chriſti, primo deſtinavit coronam Benedictam Bri-*

But the *Universal* * ^{Lamb. Arch. f. 142. De Regis officio & de jure & appendicijs coronæ regni Britannia.} and whole *Land*, and all the *Iſles*, as far as *Norway* and *Denmark*, do appertain to the *Crown* of his *Kingdom*, and are of the *Appendages* and *Dignity* of the *King*. And it is one *Monarchy* and one *Kingdom* of *Britain*; but now it is called of the *English*. For ſuch *Bounds* and *Limits*, aforeſaid, *Pope Eleutherius* Conſtituted and put upon the *Crown* of the *Kingdom*. Who in
tania,

*tania, & Christianita-
tem Deo inspirante Lucio
Regi Britonum.*

the Year 167. after
Christ's Passion, first
sent the Blessed Crown
of Britain, and thro'
God's Inspiration Chris-
tianity to Lucius King
of the Britons.

*Vid. Dod-
wellum de
nupero
Schismate
Anglicano.*

Thus early the Crown of Britain, compre-
hending all the Land and the Isles as far as Nor-
way and Denmark, among the rest the Orkades,
where the Picts first Settled, was enjoyed as was
thought of Divine right by a Sole Monarch;
and as he was the first Monarch who promo-
ted Christianity throughout the Island, in this
matter he was God's Vicar to the Christians
within this Island, and the head of Union, in
as good a Sense as a Learned Enthusiast and
others contend, that the Bishops of Jerusalem first
were, and afterwards those of Rome.

CHAP.

The 1st
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d. Litt
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C H A P. XI.

The 1st. of King Arthur, and the elder Gildas's Testimony of a British Monarchy, soon after King Arthur's time.

HAVING been put into my way by an English Parliament, in comparison with which we are but of yesterday and know nothing; I might be tempted to go without my Guide, to make up that gap in the Evidence of the British Sovereignty, from Loerine (under whom the Island was re-united) to King Arthur, which is left by E. I. and his Council, as not necessary to illustrate his Right.

Therefore I cheerfully follow my clue to that glorious King Arthur, who wanted not the Hand of our ^a second Virgil, to add any thing of Fiction to his true Character.

Arturus R. Britonum famosissimus, Scotiam sibi rebellem subiecit, & per totam gentem delevit; & postea quendam nomine Anguselum in Regem Scotie praefecit, & Arturus apud Civ. Legionum fes-

Arthur the most famous King of the Britains, Subdued Scotland, which Rebelled against him; and almost destroyed the whole Nation; and afterwards set over them one

(a) Vid. Sir Ric. Blackmore's inimitable Poems of Prince and King Arthur. (b) Rot Claus. 29. E. I. m. 10. d. Litteræ mis. ad Cur. Rem. super jure Regni competente in regno Scotia;

*Westch-
ster.

tum faceret celeberrimum
interfuerunt ibidem om-
nes Reges sibi Sub-
jecti, inter quos Angusa-
lus Rex Scotiae Servi-
um pro regno Scotiae ex-
hibens debitum gladium
Regis Arthuris detulit
ante ipsum, & Successive
omnes Reges Scotiae om-
nibus Regibus Britonum
fuerunt Subiecti.

Angusel for King of
Scotland, and when af-
ter that the said King
Arthur held a Feast at
the City of * the Le-
glons, in British Caerle-
on, all the Kings who
were Subject to him,
were present: Among
whom Angusel King of
Scotland, performing
the Service which he
owed for the Kingdom
of Scotland, carryed
King Arthur's Sword
before him; and all
the Kings of Scotland
successively were Sub-
jects to all the Kings
of the Britons.

Sir Thomas Craig, indeed denies that there
ever was any such British King as Arthur, be-
ing supported chiefly by the authority of New-
bergensis, who was not only a despiser of the
British Antiquities, which took from the Ho-
nour of the Saxons; but writ after R. I. had
made a sort of a Release to the King of Scots;
which I shall shew was not of such impor-
tance as it has been taken to be; and if it
were, could have no more effect than his
Brother's Charter, intending to Subject his
Crown to the Pope.

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To *Newbergensis*, Sir T. C. joyns lying *Polydore*, whose Ignorance, or else Malice, Mr. H. *Lbnyd* handsomly exposes. Sir *Thomas* having such mighty Champions on his side, as our *Newbergensis* and the *Italian Polydore*; thinks upon this occasion he may reject, not only their own *Scotch Historians*, but all the Monuments of *King Arthur* in *England*, and those in *Scotland*, which he confesses to be probable; yet he fancies he Argues to Demonstration against *King Arthur's* Story. 1. From the Silence of *Gildas*, who he says was Born in the Year 501; from whence he concludes him to have been 3 Years older than *Arthur* is represented; of *Bede*, who lived but 160 Years after him; and of the *Roman* and *Saxon* Authors.

2. From the Discredit *Jeffery* of *Monmouth*, (who is thought to have been the most particular in his Story) has lain under.

I. As to the *Roman* Authors, their Silence need not be accounted for, concerning matters in another World, with which they had then no Communication: As to *Bede* and other *Saxon* Writers, enough has been said. But it lies upon me to remove the wonderful Negative Answer from the silence of *Gildas*. He appears to have been a Preacher of those times; and applies no more of the *British History*, than he thinks proper on his Text, to lay before his Country Men, the dissolute State into which they were Sunk. And tho' the Glory of *King Arthur* had been a proper Topick to excite them to a generous Emulation; Yet, as *Gildas* seems wholly intent upon Religion; Military Virtue was no part of his Subject:
I And

And yet he gives no obscure hint, that they had chosen such Men as King Arthur, to carry them to Arms; from which he would drive them into Cloisters.

Having mentioned the Luxury which encreased, with their great plenty, when they rested from the Pictish and Scotch Revers; he says,

Gildas ed.
per D. G.
Dec. Ebor.

*Ungebantur Reges &
non per Deum, sed qui ce-
teris crudeliores erant: Et paulo post, ab unclori-
bus, non pro veri exa-
minatione trucidabantur,
alii electis trucioribus. Si-
quis vero eorum mitior,
& veritate aliquatenus
propior videretur, in
hunc quasi Subversorem
Britanniae omnium odia
& tela torquebantur,
sine respectu.*

Kings were Anoin-
ted not by God; but
they who were above
all others in Cruelty:
And soon after, they
were Slain by their
Anoinsters, without ex-
amining into the truth
of what was alledged
against them, other
more cruel being cho-
sen. But if any of
them in truth might
seem more fit, against
him as a Subverter
of Britain, the hatreds
and darts of all were
thrown, without re-
spect.

I will not contend with any Man, who may Criticize upon the Word *Propior*, and hold that it signifies nearer to the Throne in right of Blood; but whether they then confin'd their choice to the Royal Stock or no; the chief Ground of their *Elections*, was to have one to Head them in the Wars: And whatever right of Proximity or Merit in other respects, ought
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excidijs
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dus vi
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lutaris
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inluct
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In *Gildas's* Opinion, to have directed their choice; if they were not rough Military Men, 'tis plain they thought them likely to subvert or weaken the *British Monarchy*.

After this, he gives account of various Successes of War, between them and the *Saxons*, to the time of his writing. But *Sir Thomas* and his admirers have over-looked his demonstration of a *British Monarchy*, in his declamatory epistle, where, having said,

*Reges habet Britannia,
sed Tyrannos, &c.*

*Britain has Kings, but
Tyrants.*

He applies himself to the then Monarch of the whole Island,

*Quid tu, insularis
Draco! Multorum Ty-
rannorum depulsor tam
regno quam etiam vita;
supradictorum novissime in
sylo, in malo major; mul-
tis potentia simulq; pro-
fusior in peccato, robuste
armis, sed animæ fortior
excidijs, Maglocune!
in tam vetusto Scelerum
atramento veluti madi-
dus vino de Sodomiticâ
vitis expresso Stolidus Vo-
lutaris! Quare, tantas
peccaminum Regiæ cerci-
vi sponte, ut ita dicam,
ineluctabiles celsorum
Montium innectis Moles?*

Why, thou Dragon
of the Island! the ex-
peller of many Tyrants,
as well from King-
dom as from Life; the
last of the abovementi-
oned in Stile, the first
in Wickedness; grea-
ter than many in pow-
er, more profuse in
Sin; robust in Arms,
but Stronger or more
Daring in those things
which destroy the
Soul, O *Maglocun*! dost
thou foolishly wallow
in such inveterate Ink
of Vice, as it were
Drunk with Wine,
I 2 *Quid*

*Quid te non ei Regum Mon-
nium Regi quem cunctis
Britannia Ducibus regno
fecit, quam Status linea-
mento editiorem exhibes
ceteris Meliorem? sed, vice
versa, Deteriorem? &c.*

Queen'd from the Sodo-
molek Vine? why dost
thou voluntarily fasten
about thy Royal Neck
so many, as I may say,
Ineluctable heaps of
high Mountains of Sins?
Why dost thou not
shew thy self to that
King of Kings, who
has made thee higher
than all the Leaders
of Britain, as well in
the Kingdom as in the
pomp of State, better
than the rest, but on
the contrary worse?

Thus Gildas, whom Sir Thomas receives, gives
so manifest proof of there being one Monarch,
over all the Kings of this Island of Britain, that
there's no need of any Comment upon Gil-
das his Text, other than to observe, that this
Maglocun was Malgo, who, as R. de Diceto,
Dean of London in King In's time, is
thus warranted to say, obtained the whole
Island; and yet neither Bede nor the Saxon
Chronicle, or any of the Saxon Writers of that
time, that have occurred to me, mention any
thing of him. But Sir Thomas admits that
there was such a British King. His Argument,
upon admitting what Holingshead says of him,
is something diverting. Our Historian says,
Malgo gave Lothian, a part of what is now cal-
led Scotland, to Erbelfred, the English Saxon:
what then, says Sir Thomas, "it cannot be con-
cluded

R. de D.
f. 553. to-
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lam obti-
nuit.

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"cluded from thence, that the King of Scots
 "payd Homage to *Malgo*; nay, the contrary
 "is to be inferred from the *feudal Law*, viz.
 "That if *Malgo* had any superiority over Scot-
 "land, he lost it by this very act; in mak-
 "ing the condition of this *vassal*, worse than
 "it was.

All this, and more of the like kind, is Balle
 upon encountering his own shadow, and his
 Country Stories; As if before *Malgo's* time
 the Scots were possessed of the Government
 over that part which he owns to have been
Pictland at that time. But if, as authorities
 evince, *Pictland* was in the Hands of the Saxons
 at that time, upon expelling or subduing the
Picts; without cramping the Question with No-
 tions of the *feudal Law*, *Lothian* which was
 called *Pictland*, by way of eminence, was ei-
 ther part of the *British Kingdom*, or granted
 out to hold of the *British Crown*.

But farther to remove all possible colour *An. 552.*
 from this objection, upon his Fancy about the *Vid. Prid-*
feudal Law; I must observe that *Malgo* is not *Introd. p.*
 held to have Reigned before the Year 552; *290, Cron.*
 and the *Northanbimbian Kingdom* began before, *Sax. An 547*
 under *Ida*: But a King of those Dominions, of
 which *Pictland* was part, received Investiture
 from *Malgo* the *British Monarch*. Which shews
 the *Northanymbrians* to have been then Feuda-
 tory to the *British Monarch*; and all the *Picts* *Vid. Inf. o f*
 and Scots there, to have been Subjects of that *Ecgfrid.*
feudal Kingdom.

C H A P. XII.

The second, of King Arthur. Jeffery of Monmouth's Credit, Supported by History and Records.

Vid. B. of W's. Pref. to Hist. account.

TO proceed in removing Objections against what has been from Age to Age believed of King *Arthur*: as the most which has been early Published of him, in a Language commonly understood, was by *Jeffery of Monmouth*, I may be bore with, in laying some Considerations together, for the supporting *Jeffery's Credit*. Two very great Men have Objected against what has been found in the Authentick Copies of *Sigebert of Gemblours*, who Dyed above 20 Years before *Jeffery* writ; as if many things out of *Jeffery* are thrust into *Sigebert*; particularly the Story of *Brutus*, instanced in by one of them, which, as I conceive arose upon the mistaken Supposition, that *Jeffery* was the first, who had mentioned those matters: Nor can I apprehend any weight in the farther strength to this Objection; that *Jeffery* himself, saith, he Translated the *British History* into *Latin*; for if there were any other Translation, tho' not so well done, or but of part; or if *Sigebert* understood the original *British Tongue*, or had but met with *Nennius*, and others who mention *Brute* and other particulars of the *British Story*; any of which were enough, and one of them could not but be true; it then follows that

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Sigebert, who Died 20 Years before *Jeffery* writ, is a good Testimony on his side. If he be not, at least our *Huntingdon* is, who not only agrees with *Jeffery* in substance, but affirmed^a that in Traveling to *Rome* he had met with the *British MS.* which he followed. This *Mr. Stow* observed that he had seen mentioned in a *MS.* of *Huntingdon*, where *Jeffery* of *Monmouth* was not Named. That^b *British MS.* *Jeffery* declares that he had turned into Latin, at the request of the *Archbdeacon* of *Oxford*; and this makes it much more probable that, wherein *Sigebert* agrees exactly with the Translation, he had it from the Original, before it was brought over, or that he had seen the same matter else where; than that any thing should be inserted in *Sigebert's Chronicle*, to justify a Translation of what must needs have been a very antient *British Manuscript*. But for farther support of *Jeffery* in this and other matters, I refer the Reader to the Learned^c *Sir John Price*, who assures us, that the *Britons* have their Laws published above 600 Years before his time, and several Authors in their own Language; some who writ by way of Chronicle, some at large.

(a) *Bib. Cot. Vespasian A. 23.* In meo vero Codice Huntingtoniano hæc sunt in Epistola ad Warinum Britonem. Hoc tamen anno cum Romam proficiscerer apud Beccensem Abbatiam scripta eor. prædictor. stupens inveni, &c. Non nominato Galfrido. (b) *Galf. Mon. in prologo. Opusculis Walterii Oxoniafordensis Arcibdiaconi, &c. quendam Britannici sermonis, lib. vetustissimum qui a Brito primo R. Britann. ad Cadualadrum, &c.* (c) *Præfatus de Scrip. Brit.*

As to the Story of *Brute*, tho' a learned Bishop thinks it was foisted into *Sigebert*, after *Jeffery's* Translation of the *British MS.* his Lordship might have observed that it is in *Nennius*, who in the ancientest *MS.* of him in the *Cotton Library*, is called *Gildas*.

And the acts of King *Arthur*, our present Subject, he might have found in a *Gildas*, to be seen in that Library; which considering the Antiquity of the Author, and how near he is taken to be to the time when the learned Bishop observes that *Nennius* Flourished, may not improbably be another work of the same Author.

* Vid Bib.
Cot. Ful.
D. Hist.
Britonum
latine car-
mine hero-
ico per Gyl-
lam, claru-
it An. 860.

The *Gildas* I here refer to, is by the judicious Person, who put a Title to the *MS.* taken to have flourished in the Year 860. This *Gildas* having mentioned *Arthur's* Summoning his Peers at *Christmas* to *York*, says

More suo diademate sumpto
Diversi generis, data fercula, dona manipulis
Larga satis tribuit

He, as was his custom, wearing his Crown, gave Entertainments, and distributed large Gifts to his Soldiers.

This, as I now take it, not having present recourse to the Book, was at *York*.

He held another Feast at *Whitfontide*; I did not observe notice of any Feast at *Easter* that Year, being, 'tis likely, prevented by War. But our Kings wearing their Crowns, and holding Courts at three times of the Year, seems to owe its Institution to him.

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Gloster,
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That Court at *Whitsontide*, was held at *York*; there called, if I Transcribed it right, *Eborac*. Notice is taken by *Gildas* of his hearing Causes, *Siquid li-* and doing justice there; the *Kings* and *Dukes*, *rigisum,* or *Earls*, who were *Subject* to him, being called &c. together; and *Gildas* says, there were eighteen *Kings* there. It seems, indeed, that the King of that part where the *Scots* have since Settled, was not there. That People having endeavoured to cast off that Dominion which he had over them; of which they immediately repented, upon his coming among them. The *Bishops*, *Clergy* and *whole Province*, or *Inhabitants* of that part, submitted themselves, and all that they had to his Pleasure, as appears by this passage, which any Man may find in that *Gildas*.

Scotosq; petit, cui turba fidelis
Pontificum, Clerisq; sacro velamine tectis
Nuda pedes, puro portans abscondita in auro
Corpora Sanctorum supplex humilisq; furanti
Obviat & flexis genibus, lachrymisq; profusus,
Sic ait, o Juvenum fortissime, maxima Regum
Quem virtus invicta, &c.
Subjicimus tibi nostra, sicut Provincia præsens,
Et ipsa te vincat pietas quæ cætera vincit.

In this, and a great deal more of the Actions of King *Arthur*, this *Gildas* seems to have been closely followed in Prose, in an ancient MS. in the Cotton Library, ascribed to one *Nitholas* of *Gloster*.

If still Men will suspect *Gildas* the Poet, let them go back to the *Gildas*, more generally known by the Name of *Nennius*; he speaking of

of the Check given the Saxons, when they were overrunning Britain, says, " At that time the Saxons prevailed and encreased not a little in Britain, &c. Arthur Fought against them in those Days; to wit * the Saxons with the Kings of the Britons; but he was Head or Leader in the Wars, or Commander in Chief.

* Saxones
cum Regi-
bus Brito-
um sed ipse
Dux erat
Bellorum
& in omni-
bus victor
exitit.

Since there were Kings of the Britons under him, can any Man doubt but he was first King? Nennius mentions twelve great Battles which he Fought, one of which appears to have been within part of the Now Kingdom of Scotland.

And 'tis observable, that Nennius mentions a piece of the Cross, which Arthur had brought from Jerusalem. This, Nennius said, was to his time kept in great veneration at *Wedale*, a Town in the Province of *Lodeny*, then under the jurisdiction of the Bishop of St. Andrew's *Lodonesia*. In Scotland; six Miles West of that anciently, or from of Old, Noble and eximious Monastery of *Mallrofs*.

To this I may add, that, as is confessed by Sir Thomas Craig, the Memory of King Arthur, is to this Day among the Scots in Arthur's Seat near Edinburgh, and his Vault not far from *Stirling*; as it is in England by his Tomb, found in the Reign of Richard I. with this Inscription.

Sir T. C.
p. 119.

*Hic jacet Arthurus, Rex quondam, Rexque
futurus.*

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The latter part plainly relates to that Renown with which 'twas belived he would ever live a King in Story. But if a Charter of his as King, was extant in the Reign of H. II. this one would think, might be enough to Silence this Dispute.

There are several *Inspecimus* to be seen in the Tower of a Charter of H. II. which confirms Grants made of *Old*, to the Church of *Glastenbury*, in which are these Words.

"Whatever had been Granted by my Predecessors, *William I. William II. and Henry* my Grand Father, and Also *St. Edgar*, the Father of *St. Edward*, from *Edmund* and his Father, and *Ethelfred* his Grand-Father, *Brian* *waleb*, *Kennethwin*, *Baldred*, *Ina*, the *Pamona* *Arthur*, *Cadred*, and many other *Christian Kings*; and also from *Kenowall*, a certain *Pagan King*; all whose Privileges and Charters I caused diligently to be sought for, and presented before me and read, and they are confirmed to the Church; which of old was called the Mother of the Saints.

And what is yet a greater Authority, with those who contend for the Honour of descending from a People Conquered by *William I. Gervase of Tilbury*, by a misconstruction of whose Words *Domesday-Book* it self is to be set aside, seems in a Treaty of his in the *Cotton Library*, to have Transcribed the *Gildas*, some of whose

(a) *Rot. Cart.* 5 E. 2. m. 7. n. 13. pro *Ab. & Canu. Glaston.* C. 7 E. 2. m. 13. n. 29. (b) viz. the second before the reputed Conquest.

Verſes I have cited, in his account of what *Arthur* did in relation to the parts now called *Scotland*; and ſays, he made *Auguſt* King of the *Scots*, *Vriam* of thoſe of *Murray*, and *Loth* Conſul, or Earl of *Lodeny*, with the adjacent Provinces.

Agreeing with this *Nicolas*, of *Gloſter*, who certainly was of the time with which he ended his Hiſtory, ſpeaking of King *Arthur*'s coming to *York*, ſays

Bib. Cot. Convocato Clero & po-
Calig. A. 3. pulo Piramum Capella-
Chron. Nic. num ſuum ſedi illi Metro-
Glee. ab. in. poli. praefecti, cui & ſcologi.
ſſio mun. curam renovandar. in-
di ad An. junxit viros ac mulieres ci-
828. vitatis indigenas per Sax-
ones in regiones longinquas
expulſi. data pace, honoribus
reſtituti. Inter quos in-
venit fuerunt 3 Fratres
regali proſapia orti, *Loth*,
viz. atq; *Urianus* &
Auguſtus, qui antequam
Saxones praevaluiſſent to-
tius terra illius ab *Alba-*
nia uſq; *Humbrum* Princi-
patum tenebant.

The Clergy and Peo-
ple being called toge-
ther, he ſet his Chap-
lain *Piram*, over that
Metropolitan See: To
whom he enjoyned the
care of renewing the
Churches. Men and
Women Inhabitants of
the Cley, driven out
by the *Saxons* into re-
mote Regions, he re-
ſtored to their Honours,
giving them Peace.

Among whom there
were found three Bro-
thers of a Royal Stock,
viz. *Loth*, *Uriam* and
Auguſt; who before
that the *Saxons* pre-
vailed, held the Princi-
pality of all that Land
from *Albany*, as far as
the *Humker*.

Among

Among these, *Nicholas* of *Gloster* shews, that *Arthur* made the distribution of the Parts, within the present Kingdom of *Scotland*, mentioned by *Gildas* the *Poet*, and *Gervase* of *Tilbury*; but as there is not the least Word, that the Kingdom was then *Scottish*, so their Kings or Rulers appointed by *Arthur*, were of some other Royal Family, between the then Bounds of *Albany*, and the River *Humber*.

He shews that *Lodeny* was within those Bounds.

*Loth autem qui temp.
Aurelij sororem illius dux-
erat, ex qua Pulwanum
& Medredum genuerat,
ad Consulatum Lodensium
ceterarumque qua ei perti-
nebant, remisit.*

But *Loth*, who in the time of *Aurelius* had Married his Sister, of whom he Begot * *Wul-* * *Wid. Ma-*
wan and *Medred*; he *imib. de*
sent back to the Go- *cod. ne-*
vernment of *Lodeny* and *thurt.*
the rest of the Regions which belonged to it.

This account might be confirmed by other Authorities; nor can it be any great question, but *Lodeny* had its Name from this *Loth*.

C H A P. XIII.

The third, of King Arthur. Of Writers who Lived in, and near his time. And the reputation given in the Confessor's Law, to what had been writ of him.

*Uffer de
Brit. eccl.
Antiq. f.
272.
Vid. Pitt.
scum de-
scrips.
Angl. p. 93.
96. 103.*

TO remove all doubts of the substance of King Arthur's Story, I may observe that the Scotch Writers, of chief Authority, Fordon, Major, and even Boothins and Buchanan, agree, that King Arthur Dyed in the Year 542. But Congell, who flourished in the Year 530, Telsine in 540, Melebin of Avelon in 560, Elwodge the Honest in 590, who all writ of the *British History*, could not but be well informed of the Actions of Arthur's Life; and Samuel Benlan of those times, writ of his Actions among the *Scots*

*Mss. nuper
penes pra-
bonerab.
Com. de
Macles-
feld.*

In the Margin of *Harding*, who writ a large History of Britain in Verse, in the Reign of H. VI. I find mention of a *Polytronicon*, writ by St. Columbe, and an other *Chronicle* writ by Bishop Colman.

*Sir T. C.
p. 34.*

But Sir Thomas Craig's censure, as if all to be found in the English History, before what he calls the *Conquest*, is vain and trifling, and almost all of it uncertain; is so far from any colour of Justice, that even the Story of King Arthur above 500 Years before his *Era*, was not only capable of good proof, but was so attested before the coming of *W. I.* that it could not then

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then reasonably be doubted; and ought not to be questioned now, if it was believed then.

That this was so, may fully appear from the Confessor's Law, which Sir *Thomas Craig* unwarily received

That Law shews that *Arthur* was not only King of all *Britain*, but laid a firm Foundation for securing the Peace of this *Monarchy*, the Dignity of the *Crown*, and the Privileges and Properties of the Subjects.

The *Confessor's Law*, Title *Greve*, mentioning the *Folcmote*, which a strong prejudice against the Rights of the *Commons*, has not suffered Men to understand; I may be permitted the rather to enlarge upon it, since the first sealed Provision about it was, of King *Arthur's* Institution.

*Folcmote, i. e. vocatio
& congregatio populorum
& gentium omnium;
quia ipsi convenire debent
universi qui sub protecti-
one & pace Domini Re-
gis degunt, & consistunt.*

The *Folcmote*, that is, the calling together, *Leges Eds*
and Assembly of all *Peo- Conf. c.*
ple and Nations; because 35. *De*
there all who live and *Greve.*
subsist under the Protec-
tion, and Peace of our
Lord the King, ought
to convene.

This *Assembly* appears to take in the People of more Nations than one; therefore for certain must have been more than a County Court, with is yet more evident from their business, and the time of the meeting.

Et

Et ibi providere debent indemnitatibus coronæ regni hujus per commune consilium, & ibi providendum est ad insolentiam Malefactorum reprimendam ad utilitatem regni: Statutum est enim quod ibi debent populi omnes semel in anno scilicet convenire, scilicet in die primo Kal. Maij.

And there they ought to provide for the indemnity of the Crown of this Kingdom, by Common Counsel; and there Provision is to be made to suppress the Insolence of Malefactors, for the profit of the Kingdom: For a Law has been made, requiring all people to meet there in Truth once a year, that is to say, on the first of the Kalends of May.

At this general Assembly, all People were to meet in a stated Council; where they were to provide for the Indemnity of the Crown, and other public concerns of the Kingdom.

But as Oaths were ever thought the strongest Engagements to Duty, they were,

Et se fide & sacramento non fracto ibi in unum & simul confederare, sicut conjurati fratres ad defendendum regnum contra alienigenas, & contra inimicos, unacum Domino suo Rege, & terras & honores illius omni cum fidelitate cum eo servare; & quod illi ut

To Confederate themselves together, with plighting Faith, and an inviolable Oath, as Sworn Brethren, to Defend the Kingdom against Strangers and Enemies, together with their Lord the King; and with him to preserve his Lands and Honours, with

domi-

domino
& extra
sum Br
volunt.
omnes P
Milites,
nes uni
Britann
in pleno
tem Duc
coram B

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it beyo

Hanc
Arthuru
it inclyt
tonum, &
& conf
Britann
semper
legis an
Arthuru
racenos
regno.

domino suo Regi citra
& extra regnum univer-
sum Britannia fideles esse
volunt. Ita debent facere
omnes Procures regni, &
Milites, & liberi homi-
nes universi totius regni
Britannia facere debent
in pleno Solemote fidelita-
tem Dno Regi ac prædesti-
naram Episcopis Regni.

all Fidelity; and that
they will be Faithful
to him within and with-
out the whole Kingdom
of Britain: So to do
ought all the Peers of
the Kingdom, and Knights
and all Freemen of the
whole Kingdom of Bri-
tain. They ought, in
full Solemote, as is a-
foresaid, to Swear Al-
legiance to their Lord
the King, before the
Bishops of the Realm.

If it should be doubtful, whether Kings in
any part of the Land, or Island of Britain,
could come within that part, which relates
to the Peers of the Realm; what follows puts
it beyond Controversy:

Hanc legem invenit
Arthurus, quondam fu-
it inclytissimus Rex Bri-
tonum; & ibi consolidavit
& confederavit regnum
Britannia universum
semper in unum. Hujus
legis auctoritate expulit
Arthurus prædictus Sa-
racenos & inimicos a
regno.

This Law Arthur
invented, who was the
most famous King of
the Britons; and there,
that, is in the Solemote;
he Consolidated and
Confederated the whole
Kingdom of Britain into
one. By the Authori-
ty of this Law, the
said Arthur drove the
Saracens, and other
Enemies out of the
Kingdom.

K

Then

Vid. inf.

Then the Report of the *Confessor's* Law shews the continuance of that Law, to that time, and that it had been received by King *Edgar*; in whose time, as I shall shew, the King of *Scotland* was Obedient to it, among the rest of the *Peers*; and after that by the *Confessor*. As evidence of History shews, that *Arthur* was Monarch of the whole *Island*; this part of the *Confessor's* Law, without looking back, to what *Arthur* was possessed of; shews manifestly, that from *Arthur's* time, the whole *Island* was not only one *Kingdom*; but all Persons within it, were under the obligation of the Oath of *Allegiance*, to act together as Subjects of one *Crown*.

This any indifferent Person might have observed, in so much as Sir T. C. thought for his purpose, to prove the *Scots Denizens* of *England*, as they were accounted one Nation with the *English*, and had always stood for the common *Utility of the Crown and Kingdom*; which is there shewn to be but one *Monarchy*. Yet it was but suitable to his undertaking, to pass by this direct Proof, from the very Authority which he receives; that from King *Arthur's* time, the *Scots* lay under the same Obligations with the other Subjects of the *British Crown*, for preserving its *Rights* and *Dignities*, the Peace of its Empire, and the Person of its *Monarch*. But so it is, that Sir T. C. thinking none but easy Men would Read what he had Writ; tho' he insists mightily upon the Authority of the *Confessor's* Law, to prove the *Scots Denizens* of *England*; would have it all pass

pass for Fable; where it demonstrates them to be *Subjects* to the *British*, afterwards called the *English Monarchy*.

Thus he counts all Fiction, which the *Confessor's Law* says of King *Arthur*, that *Fictitious King*, as he calls him; and for this purpose, that very Book, which he uses as a faithful Edition of the *Confessor's Law*, is to pass only, for a Book with the Title of the *Ancient Laws*, Printed at *London*, by *John Day*, in the Year 1568; not believing that Men would observe this to be the Book, which he Cites else where, to prove the *Scotts Denizens* of *England*, by the *Confessor's Law*.

Vid. p. 121.

Vid. Sir.

T. C. p.

236, 237.

238.

K 2

CHAP.

C H A P. XIV.

*Justification undertaken, of what E. Iff's.
Letter to the Pope, has farther of the
British times. Two Heads to be made out.
Of the Feudal Law in those times.*

I Have thus layed together some part of those Evidences, which satisfied E. I. and his Learned Council and Parliament, that the Kingdom of Scotland was part of the British Empire, Sway'd by the Glorious King Arthur; and that the King of Scots, as now called, but rather of *Picts*, did Service to King Arthur, for such part of that Kingdom, now called Scotland, as was then possessed by Scots or *Picts*.

Adhuc.

Rot. claus.

29 E. I.

To follow my clue, Edward I. farther assures the Pope, that successively from King Arthur's time, all the Kings of Scotland were Subject to the Kings of Britain.

That they were so, there needs no farther proof, than what has been produced from the Confessor's Law; which shews that all Persons, within the Island of Britain, owed Allegiance to its Imperial Crown.

That Wise King Edward, thought it not material, to give any particular Instances from King Arthur's times, till Edward the Son of Alfred; it seems, not thinking the Monarchy, to be accounted entirely Saxons or English, till then, because of the Usurpation of the

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Danes, tho he derives the right to it, from its continuance with the Britons. And 'tis observable that, tho the *Saxon Chronicle* makes Egbert, or *Egbryst*, the eighth *Saxon King*, that Reigned over all *Britany*; I do not find there that those of *South-Wales* Submitted to him.

Vid. Inf. An. 827.

And yet I may admit the right of the *British Monarchy* to have come to him, as Successor to *Ina*, who, as I shall afterwards shew, United a *Saxon* and *British Title*.

However, to remove the objection, from the *Monarchie's* not being fixed to any one part of the Kingdom, I must observe, that the Dispute is not about the right of a material Crown, but of that Authority, which, as the great *Fortescue* told his Prince, was a *populo effluxa* an efflux, or emanative from the People: The same which the Civil Law holds, in relation to the more absolute manner, of a Prince's enjoying the *Supream Power* of a Nation. This Power might have its chief seat, sometimes in one part of the Island, sometimes in another; but that at last, all fell into the *West Saxon Monarchy*, as so many Rivers into the Ocean, is so plain, that it wants no Proof.

Vid. Grotium de modo habendi potestatem.

I may here well consider, the *British Monarchy*, as continuing truly *British*, till King *Egbert's* time; and therefore, whatever Superiority was exercised over the *Kings* and *Kingdom of Scotland* before that time, by any King, or *Monarch* of the *English*, or *British*, it may be indifferently applyed, for Manifestation of this Right: And that the rather till at least the Year 827; because I find, that, in that

Just Script: Chron. eccl. Aug. sinensis, De An. 827.

Year Egbert was at *Winchester*, Crowned King of all *Britain*, and published an *Edict* or Law, that the *Saxons*, from that time, should be called *English*, and *Britain*, *England*.

In order to make what I shall offer the better understood, I shall shew,

I. That the feudal Law, was in use here in the *British* times ; and therefore, that the *Kings* of *Scotland*, if any such there were, or they who were possessed of any part of the present *Kingdom* of *Scotland*, might well do feudal *Homage*.

II. That they actually were *Homagers*, to the *British Crown*, for such part as they held in their own Country ; and at least *liege Men* as *Subjects*, without regard to any Land that they held in *England*, or *Wales*.

The *Proofs* which I have Selected out of numbers as full in *Domesday Book*, of the *Feudal Law* in the *Saxon* times, may well induce the belief, that these usages were here before ; unless the time of their being brought in can be guest at, with some probability : But I shall touch upon some positive *Proofs* of it.

The *Confessor's Law*, having mentioned King *Arthurs* Institution of the universal *Folcmote*, of all the *Spiritual* and *Temporal Peers*, and *Commons*; and the *Obligation* they lay under, from their being *Sworn Brethren*; to *Defend* the *Person*, *Lands* and *Honours* of the *King*, with the *Fidelity* of *Liege-Men*, to provide for the *Indemnity* of the *Crown* of the *Kingdom*; repressing the *Insolence* of *Malefactors*, and *Defending* the *Crown* against all *Strangers* and *Enemies*,

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emies, which Institution is there shewn, to have been revived by *King Edgar*; that Law immediatly adds,

Debent enim universi liberi homines totius Regni iuxta facultates suas & possessiones & iuxta catalla sua & secundum feodum suum, & secundum tenementa sua, arma habere, & illa semper prompta conservare ad tuitionem regni, & servitium Dominorum suorum explend. peragend.

For all the *Freemen* of the whole Kingdom ought, according to their Estates, and Possessions; and according to their Chattels, and according to their Fee, and according to their Tenements; to have Arms, and to keep them always ready for the Defence of the Kingdom, and discharging and performing the Service of their Lords.

Then, after mentioning, that the Arms were to be kept as *beir-looms*, it adds

Barones vero qui suas consuetudines habent, & qui focam habent Curie de suis hominibus, videant ut sic de eis agant & omnia rite faciant quatenus erga dominum Regem reatum non incurrant, nec coronam regni prod. offendant.

But let the *Barons* who have their Customs, and *Suit* of Court of their Men, see, that they do so, concerning them; and do all things rightly, so that they incur not guilt towards their Lord the King, nor offend the Crown of the said Kingdom.

The late *Dean of Worster*, whose Learning might have shewn him enough of the Constitution of this *Monarchy*, to induce him to Swear Allegiance to the present Government; having undertaken to detect numbers of our antient Charters of *Forgery*; probably, because of the Words *Fee* or *Fend*, *Tenement*, *Fesal*, or *Vassal*, and the like; I shall wait for his Objections, before I produce many of that kind: But to remove the supposition that the *Confessor's Law*, 4 *W. I.* was adapted to the usage by that time settled here by *W. I.* I shall refer *Dr. Hicks* and other undervaluers of the Testimony of old Charters, to one transcribed by a Monk of *Worster*, in the time of *W. I.* and a Judgment in the time of that King, concerning the rights of that very *Church*, to which *Dr. Hicks* had so near a relation.

Bib. Cot.
Tiberius.
13. Carte
Collect. ab
Henningo
Mon. C-
nob. de
Worcester
temp. W. I.

An. 832.

The Charter is of *Wiglaf* King of the *Mercians*, and may serve for an additional evidence of the Truth of an other of that King's Charter's, which *Ingulp* assures us, he had Transcribed *Verbatim*; in which are the Words *Fee*, or *Fend*, and other *Feudal terms*.

The Charter of *Wiglaſſ* to *Worſter*, ſays.

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*Præd. loca liberabo cum
universis Casalibus qui
ipsi locis universis sunt
subditi hoc modo per ævum
liberabo a pascu Regis &
Principum, & ab omni
constructione regalis vil-
le, & a difficultate quæ
nis Saxonico feasting-
men dicimus.*

I will free those
places with all the Cas-
sals, who are Subjects
throughout all those
places in this manner,
I will free them for
ever, from Purveyance
for the King and Pri-
nces, and from all Build-
ing of the King's Town,
and from the hardship
which we in the Saxon
Language call Feasting
Men.

The Word *Cassal*, no Man can doubt to be
of the same Import with *vassal* now; con-
sidering that the Persons to whom it was ap-
plied, besides that of contributing to the repairs
of the King's Town, or Fort, in the Neighbourhood,
(which as it might have been *Castleguard*, might
also have been by Virtue of the common charge
upon Land, without relation to Tenure) and
besides Purveyance for the Crown, was charged
with a *corrody*, or obligation to entertain such
a number of Men. That the word *Vassallus*
was used in the same Sense, as now before
King Alfred's time, we have the Testimony of
Affer of that time; who speaks of King Al-
bered, or Eshered's Flying from the Danes,
with some of his Soldiers and *Vassals*: But tho'
the *Cassals*, or *Vassals*, in the Charter and their
Lands, were freed from most of the common
charges, that of the Expedition remained, to
wich, as will appear by the following Exem-
plication

*Vid. Affer.
Menev. de
An. 878.
Vassallis.*

plification of a Judgment, many within Oswald's Law were bound, by reason of Tenures.

Bib. Cot.
Tiberius
sup.

Godf. Const. Ep. Remigio & Waltero Giffardo & H. de Ferrers & Adamo ceterisque Baronibus Regis. Sciatis quod ego testimonium fero, quia dum en precepto Regis Placitum tenui int. Ep. Wulstanum & Ab. de Vesham quod Ep. deracionavit 4 hidas ad benincunyrth & domos in civitate de suo pseudo esse, ita quod Abbas sibi debet inde servire, sicut alij sui feudati. Et deracionavit Socam & Sacam de Hantonā ad suum Hundred. Oswaldslauue quod ibi debent placitare, & geldum & expeditionem, & cetera legisservitia de illis XV. bidis secum debet persolvere, & Curisecat & Sepulturam ad suam villam Croppetborn debent reddere. Hoc fuit derationatum & jurat. coram me & Urs. de Abetot, & Osberno fil. Escrob, & ceteris Bar. Regis

Godfry Bishop of Constance to Bishop Remigius, and Walter Giffard, and Hen. de Ferrers, and Adam, and the rest of the King's Barons; know ye, that I testify, that while I, by the King's Precept, held Plea, between Bishop Wulstan, and the Abbot of Vesham, or Evesham; that the Bishop deraigned 4 Hides at Benincunyrth, and Houses in the City, to be of his Feud; so that the Abbot ought to serve for it, as the rest of his Feudatories. And he deraigned the Soc, and Sac of Hanton, to his Hundred Oswald's Law; that there they ought to Plead, and it ought with him to yeildgeld, and expedition, and other legal Services, for those 15. Hides; and the Men ought to render Church

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(a) Vis
berm
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judicante omni vicecomi-
tatu.

Church Stead, and Bury-
al at his Town Crop-
thorn. This was de-
raigned, and Sworn
before me, and *Uri*
de Abetot and *Osburn*,
the Son of *Eserob*, or
Seroop, and the rest of
the King's Barons;
the whole County
Judging and Testify-
ing.

Not to stay to prove, as I think I could
with clearness, that *Uri de Abetot*, who was
the then chief of *Worstershire*; and *Osburn*, the
Son of *Eserob*, who are all the Barons na-
med of them, who were present at the Judg-
ment, were old Saxons; nor yet to prove that
the *Bp. Wolstan*, was a Saxon Bishop, *Henry de*
Ferrers, and *Adam de Port*, the Ancestor of
the *St. John's*, were Saxon Barons.

I. I cannot but observe, that this was a Coun-
ty Court, where, by the Common-Law, the
Freeholders are Judges; and there were in full
exercise of their Power.

II. The King's Precept, was the Writ of
Justicies, which may to this Day be Proceeded
on, before the Sheriff, in the like Case.

(a) *Vid. G. D. f. 176. a Ter. Osbemi fil. Ricardi Os-
bernus fil. Ric. Scaupe tenet de Rege BeAune Ric.
pater ejus ten. (b) F. N. B. Br. de Consuet. & servit.*

III. This

Vid. inf.

III. This concerned what was within *Oswald's Law*, which is here accounted but as one Hundred, as it was one intire Fee, yet in the Survey it appears to have consisted of seven *Hundreds*, which performing all manner of Service to, or under the *Bishop*; and being no part of the *Sheriff's Farm*, for which he was to account to the King; no part of the *Bishop's Fee*, is entred in *Domesday-Book*: And of twelve *Hundreds*, within that County, only five are entred in the great Survey, for that very reason expressed.

IV. This being preserved entire, under a *Saxon Bishop*, what ever Custom and Tenure was within those seven *Hundreds*, must needs have been from of Old; at least from the time of *Bishop Oswald*.

Who was
Bishop in
King Ed-
gar's reign

V. Notwithstanding the exemption that Hundred had, it reached no farther than *Wigglaf's Charter* mentions; which leaves the *Expedition* as it was before. If, therefore we find the *Expedition* there, by reason of *Tenure*, we are to believe that it was continued from the *British* times, upon the first granting out of Lands, to the Lords of *Manors*, or to the owner of any Capital Fee, who might afterwards have granted out to others.

VI. That the *Expedition*, mentioned in this Judgment, was a service, by reason of tenure is evident.

I. All

I. All was within one *Fee*, or District, with feudal Tenants under it.

II. All who treat of the *Feudal-Law*, agree, that the first Institution of it was *Military*, or with relation to the War.

III. Suitably to what might be shewn of the time of *Cnut* the *Dane*, and the end of the erection of *Baronies*: the *Bishop* was the *Head-Man*, or Leader: For they were to perform those Services which the Law required with, that is, under him.

IV. The *Expedition*, was a Service expressly shewn, to be as the Land lay within the *Bishop's Feud*; and the same which the rest of his *Feudal Tenants* performed.

This Judgment, with the account in *Domesday-Book* of the Land, of that Church, will give mutual light and strength to each other.

*Ecclesia St. Mariæ de Wirecestre habet unum Hund. quod vocatur Oswaldeslau, in quo jacent CCC. Hid. De quibus Ep. ipse eccles. a constitutione antiquor. temporum habet omnes red ditiones * Socharum & omnes consuetudines inibi pertinentes ad dominicum victum & Regis serviti-*

The Church of St. Mary of Worster, has one Hundred, which is called Oswald's Law, in which there lie 300 Hides. Of which the Bishop of that Church, from the Constitution of antient Times; has profits of all Pleas, and all Customs there be- longing to own his Ta-

G. D. Ter.
eccl. de.
Wirecestre.

* Vid. Le-
ges Ed.
Cof. de
soc & sac.

um & suum. Ita ut nul-
lus Vicecomes ibi habere
possit querelam nec in ali-
quo placito vel in alia qua-
libet causa. Hæc præd.
CCC. Hides fuerunt de
ipso dominico Eccles. Si-
quid de ipsis cuicumq; ho-
mini quocumq; modo attri-
butum sive præstit. fuisset
ad serviendum inde Ep. Ille
qui istam terram præst-
itam sibi tenebat nul-
lam omnino consuetudi-
nem sibi met inde retinere
poterat, nisi per Episcopum
neq; terram retinere nisi
adimpletum tempus quod
ipsi inter se constituerant,
& nusquam cum ea ter-
ra se vertere poterat.

ble, and the King's
Service, and his own;
so that no Sherif can
have any demand
there, neither in any
Plea nor in any other
Cause.

These abovementi-
oned Hides, were of
the very demesne of
the Church; and if
any part of them was
any way given or
granted to any body,
to serve the Bishop for
it, he who held that
Land granted him,
could retain no cus-
tom for it to himself,
but thro' the Bishop, or
by his Licence: Nor
retain the Land beyond
the time which they
had agreed on, and
could never turn him-
self with that Land.

Here are many things to be observed, of the
Nature of the old *Fendal-Law*, some things par-
ticular to that *Fend*; wherein the entry plain-
ly shews, that there were different Tenures in
others.

I. It appears that the Tenure there was from the constitution of ancient Times, and therefore must have been before *Oswald* was Bishop of that See; who Dyed Archbishop of *York*, in the Year 992. and the Survey giving this account of *Oswald's* Hundred, was in the Year 1085. If he had been Bishop of *Worster* several Years before, what was about 100 Years past, could not be said to be of antient Times, or of *Old*.

II. Here was one great Manor, with a Court *Baron*, where Causes were Tryed; and the Bishop as Lord, had the profits of the Pleas.

III. It was a *Barony*, where the King's Service, which there could be no other but Military, as they were exempted from all other Service to the Crown, were performed under their Lord, at the head of them.

IV. Whereas parts of other *Baronies* were in several Hands, the Owners of which could raise Manors to themselves, which is imployed in that of retaining Customs to themselves, no body could within that Fee, without Licence from the Bishop.

V. They were so far from this, that they could not do Homage for any of those Lands to another *Baron*, which many might else- *Vid. sup.* where; having liberty to go whither they would with their Land.

For

For Instance under *Terra Hugonis de Port* in Hampshire.

Hantescire
f. 45.

*Ipse Hugo tenet Chine-
bam Agbemundms de eo.
Ipse tenuit de Rege E. &
potuit ire quo voluit.*

Hugb himself holds *Chinebam Agbemund* of him. He held it of King *Edward*, and could go whither he would.

It appearing so manifestly, that the *Feudal-Law*, and particularly *Military tenure*, was from of Old, long before the Survey, by order of *William I.* in that part of *Worstershire*, which could rectieve no change by his coming; the presumption is very strong, that it was here in the *British times*; and according to the *Maxim*, this presumption ought to take place, till the contrary be proved, or at least some other probable time be fixed for the first entrance of the *Feudal-Law* here; the conjecture of its coming in with *Norman's* sayling.

As much as may be, to shorten the enquiry into positive Proof of it, I shall prove *Military Tenure* in the time of the *British Cadwallader*, whom I shall afterwards shew to have been truly Monarch of all *Britain*. In the *Cotton Library*, there's an original Charter of *Cadwallader's*; wherein all that I have taken of his *Stile*, is

Carr. Orig.
in Bib. Cor.
An. 675.

Caedualla Deo disponente Rex.

I *Cadwalla*, by God's Providence King,

Which

Which not being limited to any particular Kingdom; shews that he accounted himself *Monarch* of the whole Island.

He grants Land, whether to the Church, or a private Person, I need not observe,

In potestatem propriæ dominationis.

Into the Power of the parties own Domination.

By this, the Grantee had Power to raise Services, in case of what he otherwise might have been obliged to perform in Person.

That there were before that time *Feudal Tenants*, who either Paid, or performed Services for their Lands, appears, in farther confirmation of what I shewed above, by a former Charter of that King's, with the same Stile; which runs thus,

Libenter impendo lv. tributarios in illis locis qui vocantur Selesey, &c. cum aliis villis sibi coherentibus & cum omnibus ad se pertinentibus.

I freely give 55 *Tributaries*, in those places, which are called *Selesey, &c.* with all *Towns* thereunto *Annexed*; and with all things thereto belonging. An. 673.

This could not be Land in possession, for that the *Tributaries* certainly held; and therefore could be only the *Seignior*: If it be said the Word *Tributaries*, relates to the quantity, or quality of Land, and not to Persons, it comes to the same thing; as there was Service due from the Persons, for the Land.

L

But

Eviden-
tia Ec.
Cant. int.
Scriptores
10 An. 68c.

But that which shews *Selesy* to be a *Manor*, of which several held, is that there were *Towns* annexed to it. Thus in another Charter of that King's, with the same *Stile*, to which he was constant,

*Concessi quandam terram
mei juris quæ dicitur Pa-
gabam cum appendisijs
ejus circumquaq; ad jacen-
tibus, i. e. Slindum, &c.*

I have granted cer-
tain Land in my dispo-
sal, which is called *Pa-
gabam*, with its appen-
dages, lying every where
round about, that is
Slindum, &c.

Seven more *Towns*, *Vills*, or *Manors*, are named as *appendages*; which manifests, that *Pagabam* was a *Capital Manor*, or *Fee*, of which the other places were held.

Cert. Ke-
nulphe. An.
821.

If any think I put a forced construction up-
on these Charters, let them consider the fol-
lowing Charter of *Kenulph the Mercian King*;
grounded upon an *Inspection*, or view of a
former Charter of this King *Cadwallader*, to
Abbingdon in *Berkshire*, within the *Mercian King-
dom*.

Mon. 1.
vol. f. 97.
Na. Cad-
wallader
in his time
governed
the Mer-
ci-
an King-
dom.

*Donans, Donabo perpe-
tuis temporibus æternam
libertatem in Sta. Trinita-
tis patrocinio per omnia loca
ad pres. Mon. pertinentia
in his tunc quor. infra Nominantur
Nomina Culanbam Cbe-
nington, Hengesteseig, Cu-
manora, Earmundeloeth*

Granting, I will
grant in perpetuity, e-
ternal liberty in the pa-
tronage of the *Holy Tri-
nity*; thro' all places ap-
pertaining to the said
Monastery, whose Names
are mentioned before,
Culanbam, Chenington

Es.

*Eatun, &c. Cum appen-
dicijs suis Geburatumum
cum suis campis sicut
Ceadwalla Rex perdo-
navit, &c. concedens
perdonabo sicut prædixi-
mus perpetuam liberta-
tem.*

*Hengesteseig Cumanora
Earmundeloeth, Eatun,
&c. with their appen-
dages, Geburatum with
their Fields, as King
Ceadwalla gave them,
granting, &c. I will
grant perpetual liberty
as we said above.*

Soon after follows in the same Charter.

*Expediſio cum XII.
Vaſſallis & cum tantis
Scutis exercentur, antiquos
pontes & arces renovent.
Ceterum planè & integrè
libertate Glorientur; Max-
imè cum ipſi deibus Do-
minicis VII. Miſſas pro
nobis ſaluberrimas offe-
runt, & armis Spiritua-
libus centum Pſalterijs
contra noſtros hoſtes demi-
care non ceſſant.*

Let the Expedition
be performed with
12 *Vaſſals*, and with as
many *Sheilds*, let them
repair ancient Bridges
and Forts. But let them
Glory in full and en-
tire Liberty; eſpecialty
when they on Sundays,
offer up 7 *Maſſes*, moſt
beneficial for us; and
ceafe not with Spiritua-
l Arms, 100 *Pſalteries*,
to Fight againſt our
Enemies.

'Tis evident, that this Service, was not newly
raiſed by the *Mercian King Kenulph*; but by
Cadwallader, whoſe Grant is here but confirmed;
he plainly had granted a large tract of Land,
for the ſake of *Maſſes*, for the Souls of him-
ſelf and his Succeſſors, to hold at the rate of
but 12 *Knight Fees*; tho' otherwiſe it might
have been charged much higher.

Cart. An. Accordingly Cadwallader, in a Charter to
 sig. in Bib. Wulfrid, or Wlfrid, then Archbishop of York,
 Cot. An. says,
 Co.

Hanc libertatem sub We have Taxed, or
estimatione LXX. tri- Rated this liberty, un-
butarior. taxavimus. der the estimate of 70
 Tributaries or Knight's
 Fees.

Vid. 1st. Having proved Knight's Service here in the
 Inst. tit. British times; no Man, who pretends to have
 Knight's read any thing of the *Feudal-Law*, will think
 Service. me obliged to shew Homage here then; which
 So Sir T. they must agree to have always been an in-
 C. cap. 7. cident inseparable from Knight's Service.

Harding, who, tho' he writ in the time of
 H. VI. cites antient Authors, not now extant,
 says of Cadwallader.

To whom the Saxons and English and eke Britons,
 The Peghtes and Scottes and Wash of grete Power,
 Obeyed than hole thurghoute the Regions,
 And Homage made, as sayth the Cronicle,
 And Soveraigne King, he was above them all, &c.

C H A P. XV.

The Fact in relation to Homage, within the British times. And the power acquired by the Saxons, from and under the Britons, while the Monarchy continued British.

HAVING shewed the *Fudal Law*, and particularly *Fudal Homage* to have been here in the *British times*; and therefore, that our *Kings*, if they had any *Superiority* over the *Kings* of that part, which is now called *Scotland*, might have had Homage of them in those times; and however, that the *British Monarchs* were intitled to the allegiance of all Persons whatever, within the *Island*; the right being settled, lets enquire a little into the Fact.

I proved out of *Nennius*, compared with the Register of *Mailros*, that the Kingdom of the *Scots*, within this *Island*, began not till the Year 843; when the *Scots* drove the *Picts* from all their holds, within this *Island*, under the Scottish King *Kinady*.

But before this, all *Lodeny* was part of the *Northymbrian Kingdom*, which was erected into a Kingdom, by the Grant of the then *British Monarch*.

As *Gildas* shews, King *Vortigern*, by the consent of a general Council of the *British Gildas*, f. Nation, called in the *Saxons*. *Nennius* says, *Hen-14, 15.*

gilt came hither in the Year 447; and by the King's leave, he sent for his Son, and other Saxon Soldiers, to fight against the Scots, and those who were of the Regions in the North, near the Wall which is called *Gall*. That by the King's orders, *Hengist* sent for them, and

Nennius.

*Ipsi cum navigarent
circa Pictos vastaverunt
Orcades Insulas, vene-
runtq; & occupaverunt
plurimas Regiones Trans
Mare Frisicum, i. e. quod
intenos Scotosq; est usq;
ad confinia Pictorum.*

They having Sailed about the *Picts*, wasted the *Isles* of *Orkney*, and occupied several Regions beyond the Waters of *Frisch*, that is, between us and the *Scots*, as far as the confines of the *Picts*.

Buchanan,
f. 6.

Tho' by *Nennius* his time, as was before observed, the *Scots* had driven out the *Picts*; the *Picts* were the only People of those parts, who were not entirely Subdued, and dispossessed by the Saxons, at their first coming: The then Confines of the *Picts*, must have been among the *Caledonian Britons*, who according to *Buchanan*, made one part of the Kingdom of the *Picts*: But the principal for some time, was *Lothian*, or *Lodeny*. Tho' the *Picts* had from the *Orcades*, and elsewhere, made incursions into *Lodeny*, and gained such Footing there, that it by way of eminence, before any other part had the Name of *Pictland*; yet as Archbishop *Usher* has shewn from *Bede*, and others, *Lodeny* became part of the *Northbrambrymian* Kingdom, which as it was erected into a Kingdom, with the consent, if not creation of the

the Britons, plainly had its first King, from the Grant of the then British Monarch. And ancient Authors are plain enough, that those parts were held of the British Crown, by Military Tenure, to fight against the Picts and Scots.

'Tis evident, as was shewn before, that Ida's Successor, *Ethelfred*, had Investiture from the British King *Malgo*, as from the Lord of the Fee.

The Saxon Chronicle continues the Succession from *Ida*, to *Aella*; who, according to the Saxon account, Dyed Anno 588; from him to *Ethelric*, *Ida's* Son. An. 588.

Against the Investiture of *Ethelric*, or as others suppose of his Successor *Ethelfrith*, with that Feud, by the British King *Malgo*, Sir T. C. Vid. sup. had made a learned Objection, as if thereby the Lord of the Fee, forfeited his Seigniorship over the Scots. When in truth it was but a rightfully placing a King over such of them as were within those Bounds.

But as *Malgo*, according to the British account, Reigned from the Year 552, to 586. Vid. Prid's Inrod. he, as *Gildas* shews, was till, or about that time, King over all the Kings of the Island.

And as the British Monarchy continued till *Ida's* time at the least; the Kings of the North-anymbrians Succeeding their Fore-Fathers, who were sent thither by the Britons, to restrain the incursions of the Picts and Scots, were Soldiers, and therein Homagers, to the British Monarch.

The Northanymbrian Kingdom, from *Ethelric*, Crom. Sax. came to his Son *Ethelfrith*, or *Ethelfrid*, 593. 596. who

who was King of the *Northanhymbrians*, three Years after the famous Monk *Austin* came into *Britain*, who, as will appear, was a means of continuing the whole Island under an entire *Monarchy*.

Soon after *Austin's* arrival, *Bede* places the overthrow of King *Eden*, mentioned above.

A writer, who ought to be of equal authority with *Bede*, being as great a Bigot, and, for ought appears, more ancient, shews plainly that the *Scots*, who were here in *Ecgfrid's*, or *Ethelfrid's* time, were under the *Picts*; and that all the *Picts*, were before that time Subject to the *Northanhymbrian* Kings; and continued so during the Reign of King *Ethelfrid*, or *Ecgfrid*, as he is there called, who Dyed *a. An. 617*.
 "b In his first Year says this Author, before
 "he was well settled in his Kingdom, the
 "bestial People of the *Picts*, with a fierce
 "mind despised *Subjection* to the *Saxons*, and
 "threatned to throw off the Yoak of *Servi-*
 "tude.

Then, having mentiond their Assembling innumerable People, of several parts of the *North*; and that there was a prodigious Slaughter of them, he concludes,

(a) *Cron. Sax.* (b) *Angl. Sacra vita S. Wilfredi, tenero adhuc regno populi bestiales Pictorum feroci animo Subjectionem Saxonum despiciebant & jugum servitutis a se abjicere minabantur.*

*Et in servitutem redacti
populi usq; ad diem oc-
cissionis Regis Subjecti
jugo Captivitatis jace-
bant.*

And the People be-
ing reduced to Servi-
tude, lay Subjected to
the Yoak of Captivi-
ty, till the Day of the
King's being Killed.

Harding says, of that Saxon King,

Then *Esbelfride*, that King was of Northumber-
land,

Harding's
MS.

With *Aydone* Fought in Batayl grete and
strong,

That than ne was King Coround of all Scot-
land.

As the Saxon Chronicle shews, *Esbelfrid*, or
Eigfrid, was Killed by *Reodwald*, King of the
Eastangles.

It appears by the Author above, of the
Life of St. *Wilfrid*, that the *Picts* were at the
time, of which he writes, under the *Northan-
bymbrian Kingdom*; and by consequence their
King was an *Homager*. But that they were
Homagers to the Kingdom of the Saxons, or to
the *British Monarch*, will not be doubted if
the King of the *Picts*, was given them by either
the Saxons or Britons. That he was not of their
own Country, there is positive authority from
these Words, in the *appendix* to *Nennius*; speak-
ing of *Ecbfrid*, as he is there called.

*Vid. Nen.
ed. per D.
Gale, f.
116.*

Ipsa

*Ipse est qui fecit bellum
contra fratruicium suum
qui erat Rex Pictorum,
nomine Hirdel.*

He it is who made
War against his Brother's
Son Hirdel by Name,
who was King of the
Picts.

Indeed that Author, ascribes the Victory to the King of the Picts: And says, that, from that Day, the Picts never paid the ancient Tribute.

Before, it seems, the Northanbymbrian Kings, had a Tribute from them; but its plain from the Saxon Chronicle, that the Picts must have Fought under the Pretender to the British Monarchy, who was Redwald; whom the Saxons make Monarch of the Island at that time. Yet such proofs as I shall soon bring, that the British Monarchy continued beyond that time, may put it past question, that Redwald must have fought as Homager, to the then British Monarch; and leave no room to doubt, what

Vid. Sir
T.C.p.159.

Hollingshead reports from the British Writers, that Etbelfrid, or Etbelfred, as he had been invested with the Kingdom of the Northanbymbrians by Cadwan, had Lothian which was part of it, and all the Lands which the Scots then Inhabited, of his Gift; which he re-seized, upon Etbelfrid's Rebellion.

Sir T. C. from the authority of lying Polydore, says, Etbelfrid was, with his whole Army Cut off by the Scots: But as before the Scots, being Subjects to the Crown of Britain, Fought under the Northanbymbrian King, against Eden; here the Picts did under the East Saxon General of the British Forces. Sure I am, I may well

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well prefer the Authority of the *Saxon Chronicle*, which ascribes this Action to the King of the *Eastangles*.

Sir *Thomas Craig*, who, like *Dector Brady*, had a wonderful felicity in triumphing with Authorities point-blank against him, would have the grant of *Lothian* by *Cadwallan*, and in upon *Ethelfrid's* Rebellion, not in the refusal at least to affect the Question of the Subjection of the *Scots*: For, says he, *Lothian* was not then a *Scottish Province*, but belonged to the *Picts*, whose Kingdom was then entire.

But if *Lothian* was a *Pictish Province*, and that Kingdom was then entire; does it not follow from his own Argument, that the possession of *Lothian* carryed that entire Kingdom along with it?

He says, indeed, that *Bede* mentions *Ethelfrid's* Victory over *Eden*, or *Aiden*, whom *Bede* calls King of *Scots*.

Sir T. C. himself seems to suppose, he was King of the *Picts* too; but what I have shewn above, makes it evident, that the *Scots* then Settled here, Fought under the *Saxons*, against a King of the *Scots* from *Ireland*.

But it ought not to be passed by, that Sir T. C. confesses *Lothian* to have been then a Province of the *Picts*, wherein he tacitly yeilds, that, by the re-uniting *Lothian* to the *British Crown*, the whole Kingdom of the *Picts*, which was then entire, fell under the *British Monarchy*; as the *Scots*, who contributed to this, were before. The *Saxon Chronologist*, supposing the Monarchy to have been in the *Saxons*, from their *Allo*, who, tho' he had the *Northumbrian* Kingdom, is called King of the *South Sax-*

Cron. Sax. Saxons, makes *Eggbryht*, or *Egbert*, to have been, but the eighth of their Kings, who *Brytenwalda*, as the *Lauden Copy* has it, *Brytenwalda* as another *Brytenwalda*, and the *Cotton Britenweald*, all coming to the same thing, who weilded or sway'd all *Britain*; because of *Reodwald's* going so far from his own Territories to reduce the *Northanhymbrians* to due Subjection, will have it, that he was one of the eight *Saxon Monarchs* of all *Britain*, before *Egbert*. Admit the *Saxons*, because of their Successes afterwards, must be allowed to rule over the *British* Authors; this makes nothing for the *Picts* and *Scots*, who, with the *Britons*, have fallen under the now *English Empire*; but shews that there were several Kings within those times, before the Monarchy was called *English*, big enough to demand and receive *Homage* from the Kings of the *Scots*, if any such were settled here then, but rather of the *Picts*, as General Attornies for their People; and to exact Oaths of *Allegiance*, from such of them as our *Monarchs* thought fit. But that *British* writers are to be justified, in continuing their *Monarchy* farther downwards, is very obvious.

Whether *Reodwald* was himself the *Monarch* of all *Britain*, or *Homager* to *Cadwan*, when *Ethelfred* the *Northanhymbrian King* was Killed, and his Forces routed, 'tis certain his Death gave no advantage to the *Picts*, to enlarge their Bounds; much less to the *Dastredians*, the *Scots* settling here, who were immediately under the Government of the *Saxons*.

Ethel-

Etibfred was immediately Succeeded in the Northanbymbrian Kingdom, by *Edwin* the Son An. 617. of *Ælla*. This *Edwin* could not have come to it, otherwise than of the gift of the then British Monarch; however, he Succeeded his Ancestors, in the Duty of Subjection and Homage to the British Crown; as they had the Northanbymbrian, on the very condition of securing those parts, from the depredations of the *Picts* and *Scots*.

According to the *Saxon Chronicle*, *Edwin* Subdued all Britain, except the *Cantuarrians*; so that at that time, which was before the British Monarchy expired, *Edwin* was possessed of the Chief Power of the Island: But the Seat of his Power was in the North, where he could the more easily keep the *Picts* to their antient Subjection.

The *Saxon Writers* will have *Edwin* to be the Monarch: But as *Cadwalla* kept up the British Title, even the *Saxon Authors*, unwillingly confess his Right.

As the *Saxon Chronicle*, and *Florence of Worcester*, who follows that, have it, in the Year 623 he Killed *Edwin*, who was possessed of all, which was divided into the *Deiran* and *Bernician* Kingdom, under his immediate Successors *Osric* and *Eanfrith*. They were soon Succeeded by *Oswald*, and the *Saxon Chronicle* says, the Year which they Reigned, was divided between *Edwin* and *Oswald*, because

Bede f.
162.

cause of their *Paganism* who reigned that Year: But *Bede* gives the true Reason, because of the *Tyranny* of the *Mad British King Ceadwalla*, whom nothing could stand before. And *Nicholas* of *Gloster*, who continues the History no farther than King *Ethelwolf's* Reign, says, that *Cadwalladar* Celebrating the Feast of *Pentecost*, at *London*; *Penda* who was King of the *Mercians*, asked him, why *Oswi*, then King of the *Northumbrians* was the only Person absent, from the *Assembly* of his *Barons*.

Thus we find by the Confession of the best *Saxon* Authors, that *Cadwalla*, or *Cadwalla* had kept the *British Monarchy*, from being eclipsed in his Days, and that he left it entire to his Son *Cadwallader*, who Dyed possessed of the *West-Saxon Kingdom*, which was the first erected among the *Saxons*, and as it has swallowed up the rest, was of old agreed to be the chief Seat of the *Saxon Power*.

Affertus
Monaco.

For which, *Aster* of the time of King *Alfred*, must be allowed to be a Sufficient Authority; he speaking of *Adhelwolf's* going to *Rome*, which gave his Son an opportunity to set up for himself, and to endeavour to prevent his Father's return to his Kingdom, shews that a great Council being held on this occasion,

Omin.

Omnis
Nobilis
regnum
filium d
entales
dentales
putantur
iusto j
buerat,
pertina
bat; na
Anglica
princip

Ca
on K
on P
whic
Emp
ms
/lan
der
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beln
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of
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Edo

*Omnium adstipulatione
Nobilium adunatum ante
regnum inter patrem &
filium dividitur; & ori-
entales plaga Patri occi-
dentales filio contra de-
putantur; ubi enim Pater
iusto iudicio regnare de-
buerat, illic iniquus &
pertinax filius regna-
bat; nam occidentalis pars
Anglicæ semper orientali
principalior est.*

By the astipulation *Afterjan-
nales, f.*
of all the Nobility, the
Kingdom before, but ^{152.}
one, is divided; and
the Eastern part was
assigned to the Father:
On the other side,
the Western to the Son.
For where by a just
judgment, the Father
ought to have Reigned,
there; the wicked and
pertinacious Son Reign-
ed; for the *Western* part
is always more prin-
cipal than the *Eas-
tern*.

Cadwallader being possess'd of the *West-Sax-*
on Kingdom, which was the Seat of the *Sax-*
on Power, ruled not only over all *Pictland*;
which *Bede* shews to have been under the
Empire, or Dominion of the *English*, or *Sax-*
ons; but had the *Picts* else where within the
Island, and the appendages to the Crown, un-
der such a League as kept them in *Subjection*, all
Bede's time; and the Government of the *Scots*
being then *Pictish*, they were involved in the
Subjection of the *Picts*.

If it be imagined that *Eden*, who was King
of the *Scots*, was not a *Pictish* King; yet the
Picts were most Powerful, and their Kings Ru-
led over all the *Scots* in those parts, long after
Eden's time; as appears from what Historians
say

Vid. S. Dun.
f. 99.

say of *Unust King* of the *Picts* in the Year 755, and others after him. *Cadwallader* transmitted the *British Monarchy* to the glorious King *Ina*, who, as appears by the true reading of the Copies preserved of the *Confessor's Law*, was not crown'd by an *Angel*, as the Print has it, but *per Angliam*, throughout what at the time of that Law obtain'd the Name of *England*, which, as that Law shews, took in the whole *Kingdom of Britain*. *Simson of Durham* says of him, he was a King most famous thro' the Extent of the whole Nation of the *English*, who royally extended the *Kingdoms* of the *West-Saxon Regions*.

(a) *S. Dun.*
Occidental
regionum
regna.

But the Style which he assum'd, was *Monarch of Saxony*.

That *Ina* succeeded the *British Cadwallader* in the *West-Saxon Kingdom*, may be prov'd by several Authors.

Rad. de Di-
ceto Abrev.
Cron.

Ralph de Diceto calls *Cadwallader* King of the *Britons*, and mentions two *Juors*, one his Son, who was very successful under him against the *Saxons*. The *British MS.* translated by *Jeffery of Monmouth*, makes *Juor* to have been the Son, and *Ini* the Nephew, who yet might very well have been Son-in-law.

Tho' *Cadwallader* was *Monarch* of all *Britain*; the Seat of his Power was in *West-Saxony*; therefore *Bromton* and others, who call him *Cedwalla*, name him King of the *West-Saxons*, and say that *Ina* succeeded him in that Kingdom. With them the *Saxon-Chronicle* agrees, and says that *Ina* went to reign over *Wæst-Saxna*, the *West-Saxons*, after him.

This

This is placed in the Year 688, but tho' he began his Reign then, he was not possessed of the *Monarchy* till afterwards; for in the Year 709, I find a Charter of *Kenred*, called there King of the *Mercians*, and in the *Saxon Chronicle*, of the *Southumbrians*, wherein he says he was,

*As stipulatus Monarchia
Albionis regni.*

As stipulated with, or
Chosen into, the Mo-
narchy of the Kingdom
of *Albion*.

That *Ina*, truly United the *Britons* and *Saxons* under one *Monarchy*; then continuing *British*, I have no less authority than the *Confessor's Law*, in that very part, which Sir T. C. thought fit to use, to prove the *Scots* to be *Denizens* of *England*; passing over the true ground of it, and leaving out what would even farther demonstrate it, than so much as he found necessary to use.

He shews from the *Confessor's Law*, that *Ina* Married a Wife out of *Wales*; but conceals the derivation of a Right to the *British Monarchy*; from, or by reason of that Marriage.

That Law ratified, by *W. I.* speaking of *Ina's* being Crowned throughout *England*; adds

*Capitulum autem cum ul-
tima amore sua Cam-
briam & Cornubiam &
Cronam benedictam Bri-*

But with his last
Wife, he took *Wales*,
and *Cornwall*, and the
blessed Crown of *Bri-*
M tannia

*tania qua fuerat ultimo
Cadwalladro Regi Bri-
tanniae.*

tain, which had been
enjoyed by Cadwalla-
der, the last King of
Britain.

Spelm.

*Concil. 1.
Vol. f. 219.*

And this, as appears by that Law, and in
Spelman's Collection of Councils, was with a
National consent; for a Council of all the
Bishops and Princes, Peers, Earls, and all the
Grave Wisemen and People of the whole Realm,
met in a Council, upon Ina's Summons.

*Cum jam Gualam fil.
Cadwalladri Regis Bri-
tonum cepisset, & coro-
nam Cadwalladri adep-
tus esset.*

He having taken to
Wife Guala, the Daugh-
ter of Cadwallader King
of the Britons: And
he obtained Cadwalla-
der's Crown.

Thus it appears, that the *British Monarchy*
continued to that very time; and that the
Foundation of Ina's Right, to be declared King
throughout England, was a consent of the whole
Realm, and that, not Founded on his succeed-
ing to the *West-Saxon Crown*; but in or upon
the right of his Wife, by whom the *Saxon*
claim to the Monarchy was merged; and
the *British Right* was truly remitted and re-
stored.

Which shews, that I may well account the
Monarchy truly British; till the Great Council
of the Kingdom in *Ecgbert's time* consented,
out of Respect to their King, that the *Mo-
narchy* should be new Named: Which made

no alteration in the rights and appendages of the old *British Crown*.

I doubt not, but 'tis now evident, that during this time, the *Picts*, and much more the *Scots* within *Britain*, who had not yet Kings of their own, were *Subjects* of the *British Monarchy*; and that the *Pictish Kings*, for *Scotch* there were none, were both in fact and of right, *Homagers* at least, without regard to any Lands, within the present limits of the Kingdom of *England*, as considered in relation to the immediate Government.

If it be sayd, that this does not affect the question of Right arising from Fact, because no King of *Scotland* was *Homager* to any *British King*; surely no Man can be so weak, as not to understand the fallacy. But directly to the mighty objection, let them shew one Kingdom of *Scotland*, or any King of *Scots*, settled here within this time, unless of such as were mingled with the *Picts*, or under the *Saxons* or *Britons*, and I will shew where and when he did Homage to the *British Monarch*, for all his Kingdom.

C H A P. XVI.

A particular deduction of the Right over Scotland, from the first erection of the Saxon Monarchy, to Edward, the Son of the glorious King Alfred, and of the Feudal Law in his time,

IT has by this time been most evident, that the *Scots* were not to be looked on, as a Nation settled in this *Island*, till the Year 843. That such Princes, or Nobility as they had, must have been liege Homagers at the least; and all the People *liege Men*, or Subjects to the *British Crown*, without regard to any part within the *British* more immediate Government, possessed by the *Scots*, as a Nation; and in truth, that they were not to be looked on as a Nation settled here, till their first *Scotch King Kenady*.

It has farther appeared, that the *British* and *Saxon Power* in this *Island*, was united in *Ina* by a general consent of all, whose consent was of any avail; and that upon the prevailing inducement of his having the interest of the *British*, as well as *Saxon Royal Family*, united in him.

Ina, as he had the right to the intire *Monarchy*, for ought appears was in full possession of it; when being satiated with worldly Glory, according to the *Bigottry* of that time, he went

went to take a fore-tast of the Future at Rome, or to secure ready admittance, by a Ticket from St Peter's pretended Successor to the Key of Heaven.

Ina was succeeded in the *West-Saxon Kingdom*, by his Cousin *Ethelbeard*, but he had not Reputation, or Power to retain the *British Crown*; for one *Ethelbald*, who is spoke of, in the *Saxon Chronicle*, as taking the Town of *Sumerton*, but no where in that Book, as I have observed, as *King*, in an original Charter, in the *Cotton Library*, in the Year 730; *Cart. Orig. in Bib. Brit.* Subscribes a Charter, with the Style King of *Britain*. *Cor. An. 736.*

This *Ethelbald*, in the beginning of his Charter, calls himself King, not only of the *Mercians*, but of all the *Provinces* under the general Name of the *Southangles*. These were within his immediate Government, but he was *First-King*, or *Monarch* of the whole *Island*.

And yet another had fairer preence, if he had Virtue to keep it: Which was *Ethelbeard*; not only, as he had the *West-Saxon Kingdom*, but for a reason, which the *Saxon Authors* did not think fit to mention, as he was Brother to *Ina's Queen Guala*, for I find him *Mon. 1. vol. f. 13.* Signing one of *Ina's Charters*, with the addition of the *Queens Brother*.

From him, to *Ecgbert's* restoring the exercise of the Power over the Nation to the right, the Administration was floating, but never quite taken from any of *Ina's Successors*, in the *West-Saxon Kingdom*.

Egbert, as the *Saxon Chronicle* shews, descended from *Ingild*, *Ina's* Brother. The *Divine rights Men* may, indeed, object that it does not appear that *Egbert* was the next in the Line, or however, that the descent to the *British Throne*, not being continued from *Cadwalader's* Daughter, the *British* right returned. To which there are two obvious Answers.

I. That in those ancient times, they rarely regarded *Proximity*, but for the most part *Consanguinity*: And even *Affinity*, entitling them to the privilege of the Royal Family, was held sufficient.

II. That the *Scots* will have no reason to Object this, till they answer all other Objections, against their long train of Successions; besides that which has not been lately raised against the *Divine Right* of *Robert III.* Tho all agree he had a good *Civil Right*, upon more manifest grounds.

Egbert, according to the *Saxon Chronicle*, was the eighth King; when *Bretwalda* weilded, or Governed *Britain*.

Mon. 1.
vol. 32.

A MS. cited in the *Monasticon* has it, that he was chosen King of all *Britain*, by assent of all parties.

Scriptores
ed. per. Sav.
f. 478.

Ethelwerd, whose Authority Sir T. C. receives, agrees fully with our *Saxon Chronicle*, and makes him the eighth of their Kings, who was in

(a) Of this at large, vid. *Reflections upon a Treasonable opinion, against Signing the Association*, per. W. A. & hic. inf.

Bri-

Britannia pollens potestate; "Excelling in Power,
"in or thro' Britain: Or rather possessed of the
Sovereignty of Britain.

The *British Monarchy*, became *English*, upon
Egbert's being Crowned Monarch of all Eng-
land in a great Council at Winchester, in the An. 827:
Year 827; hence is the date of the *English*
Monarchy; tho' perhaps he had not the full
exercise of that Right, till the Year 834, when
he had a great Victory over the Britons and Danes.

The Register of *Abington* says of him,

Bib. Cor.
Claud. B. 6.

Omnem Reges Brito-
rum in deditionem acce-
pit.

He recieved all the
Kings of the Britons,
to a Dedition, or giv-
ing up themselves to
be his Homagers.

That the Scots were under him, is plain;
from their Register of *Maitros*; which tells us,
that he committed Spoils, or Depredations in the
Realms of others, and no body could resist
him. Nay farther, to put this matter out of
Dispute, the Register being writ among the
Scots, the Composer calls his Country *Scotland*:
But then he owns, that Egbert wasted *Scotland*;
because their King broke the pact of Peace, which
manifests, that this was because he had departed
from the ancient Subjection, which he had pro-
mised.

Cron. de
Maitros de
An. 834:

Still, date the *English Monarchy*, at the latest,
as then taking in the *British*; and yet this
English Monarchy, which as it was grafted into the
British, then gave a denomination to the Stock,
was 9 Years older than the ancient Kingdom

An. 847.

of Scotland: And that of no larger extent, than what was gained, by driving out of the *Picts*.

That Kingdom, as appears above, did not take in *Pictland*, which reached over all *Lodny* at the least; and tho' *Cuned* bringing a considerable force of *Scots* from *Ireland*, expelled the *Picts*, and settled here King of his *Scots*; he and his People succeeded only to the *Pictish* Power, which was Subject to the *British* Crown.

In the Life time of *Ecgbert* his eldest Son ^a *Ethelstan*, was taken in as partner, in the Monarchy: I find a Charter of *Ethelstan's*, in which he Stiles himself Monarch of all Britain.

He chusing to continue a *British* Style, 'tis the less to be wondered, that the *Saxon Chronicle* says nothing of him.

Kent, *Surrey* and *Sussex*, were under his more immediate Government; but he continued his Stile of Monarch ^b of all Britain, beyond the Year ^a that *Cuned* set up a Kingdom among the *Scots* here.

Ethelwolf, who was first designed for the Church, was for sometime within *Ecgbert's* Reign, King ^a of *Kent*: For I find a Grant of *Ecgbert's*, with consent of his Son *Ethelwolf*, King of *Kent*.

Ethelwolf Succeeded his Father, in the *West-Saxon* Kingdom, in the Year 838.

(a) *Vid. Bib. Cor. Domitian A. 8. Cron. Sax. lat. de eodem.* (b) *Vid. Mon. I. vol. f. 193.* (c) *An. 843. Weldingealle Britone.* (d) *Vid. Bib. Cor. Int. D. 2. f. 125. An. 836.*

In his time, or rather *Æthelstan's*, who continued King of all the *Britains*, the *Danes* began to be powerful within this *Island*; and if the *Scots* did not assist the *English Monarch*, to repell their incursions, as appears by the *Confessor's Law*, they disregarded the Obligation, of the *Fundamental Law*, and *Oaths*, under which they lay. The *Northanbymbrian Kingdom*, which was the check to the *Scotch Incursions*, and enforcer of their *Allegiance* to the *English Crown*, was then in the Hands of the *English*.

But the Power of the *Monarchy* was much weakned, by *Æthelbald's* being in the Life time of his Father, and of *Æthelstan*, made King of the chief Seat of the *English Monarchy*, which was as it were divided between him, his Father, and *Æthelstan*. *Vid. Sup. Asserium.*

He, who in the *Register of Mailross*, is called *Aðelfam*, Uncle to *Æthelbert*, according to that left the *Monarchy* to his Nephew, and Heir *Æthelbert*. *Reg. de Mail. An. 860.*

The chief Seat of the *Saxon Power*, as *Alfred* the youngest of King *Æthelwulf's* Sons declares in his Will, was possessed according to the rule of Succession, appointed in a great Council, or Parliament at *Langedene*. *Vid. Append ad vita. Alfredi.*

Æthelbryth, the next to *Æthelbald*, and Successor to his Uncle's Style, held the *Monarchy* in great Peace, all his Days. *Eallum tham Rice Cron. Sax.*

In the Year 866, *Æthelred* and *Alfred* succeeded as Partners in Power, which *Alfred* in his Will, calls all *West-Saxony* to Wit. *An. 866. Cron. Mail. 864.*

Yet

Yet hitherto there seems no full *National* Consent, and the Monarchy seemed to be claimed only in Virtue of the Settlement of the *West-Saxon* Crown.

S. Dum. And therefore, as it seems past doubt, there was a general Assembly of all within the *Island*, who did not submit to the *Danes*, to consider where to place the Crown of the *Island*, to secure it against those Invaders. As *Simson* of *Durham* has it, *Alfred* was, upon *ADucibus,* the Death of *Esthelred*, chosen by the *Princes* *&c.* and *Prelates* of the whole *Nation*; and not only by them, but also was entreated by all the People to Reign over them.

Alfred's near Kinsman *Esthelwerd* says, he was Successor totius Principatus, that is, of the whole *Monarchy*.

Alfred was a Man, raised up by the Almighty to revive the sinking *Monarchy*; which no other Man of that Age, could have preserved from the inundation of the *Danes*.

An. 871. His Reign began in the Year 871. In that Year, many Battles had been Fought with the *Danes*, who made peace with the *West-Saxons* that Year, and the Year after with the *Mercians*, who had a distinct King under the *Saxon Monarch*.

Cron. At that time, the *Danes* made some Settlement, in the *Northanbymbrian Kingdom*; and *Sax. An.* in the Year 875, their Leaders *Hreopedun* and *875.* *Halfden* Subdued, and frequently wasted the Land on *Peobtas*, and on *Stracch weales* of the *Picts*, and *Stracled-welsh*.

These *Stracled-welsh* were Britons: And it seems, that whatever Power *Cuned* had secured

cured in his time, to his Country Men; it continued not above 32 Years together, from the first erection of a Kingdom of Scots here; for by the Year 875, the *Picts* and these *Welsh* had got the Power.

The Learned Mr. *Lloyd*, speaking of the *Breviary* *Selgovij* and *Hadeni*, who in times past inhabited *Cumberland*, and the *Redbanks*, who of *Brit. p.* 30. 3f. had been Subdued by the *British* King *Arviragus*, after they had been for some time settled in *Albany*, says, "it is well known that these Countries, together with *Gallovidia*, so far as the River *Cluda*, unto the Year 870, were in the *Britains* possession.

The supposition, that they then withdrew into *Wales*, that Learned Gentleman might be led into, from their being generally known after that, by another Name. But as will appear, their possession of a considerable Country in those parts, continued downwards to this Day. p. 31.

For this, Mr. *Lloyd* seems chiefly, to rely upon the *Scotch Historians*.

Marianus's MS., as he observes, was published with great part, in relation to the *Britons*, omitted.

Affer, who lived in the very time, in which he writ, confirms Mr. *Lloyd's* Correction of the *Saxon Chronicle*; for one Year makes no difference, because, some begin the Year at one time, and some at another. He speaking of the Year 871, and of the Army of the *Pagans* dividing, says, that under *Halsden*, went into the Region of the *Northanbymbrians*, and put their whole Region under his Dominion, *Streche* and *denes*. *Affer, f. 159. An. 871.*

and they depopulated the *Picts*, and the *Strechedansians*, but not a word of the *Scots*; they not being accounted a People, but falling under the Denomination of them, among whom they lived.

Ethelwerd,
f. 480.

The Saxon Historian *Ethelwerd*, agrees in time with the Saxon Chronicle, and speaking of that division of the *Danish* Forces says,

*Crebrins inducunt Picti
bellum Cymbrisq;*

They often bring
War upon the *Picts* and
Cymbrians.

The last of which, were plainly the old *Cumbrians*; of whom I shall have occasion to say something, and these seem then the chief of the *Streached Welsh*.

Affer and the Chronicle, tho' they differ four Years in the time, agree in Substance, and inform us, that *Halfden* divided all the Land of the *Northanbymbrians*, between himself and his *Men*, as *Affer* has it; who, says he, cultivated it, with his Army; the Chronicle says, his Men Ploughed and Cultivated it, which come to the same thing; only that *Affer* leaves it the more strongly to be inferred, that as many were to Plough, for the Subsistence of the Soldiers; many of them held of their King in Chief, by *Military Tenure*.

An. 886.

Still the Saxon Chronicle speaking of *Alfred*, in the Year 886, says, "The whole *English Nation*, turned to, or obeyed him, except that part which was under the Power of the *Danes*."

Where,

Where, by *English Nation*, was plainly meant, the same with *British*, before the Name of the Monarchy was changed; but by that Chronicle, it would seem, as if the *Picts*, the *Cumbrians* and all others, of the Northern part of this *Island*, were under the *Danes*; for their King *Godrun*, is called *Se Norðberna Cyning*, the *An. 890:* Northern King, or King of the North; and *Affer* calls them *Nord Manni*, the Men of the North.

In the next Year, the Chronicle mentions *891.* the Landing of three *Scots* from *Ireland*, who came hither out of Devotion, as *Pilgrims*, *Dubstan*, *Maccabeth* and *Maclinnin*; certainly the same with *Malcolm* the first, who according *Sir T. C.* to *Sir T. C.* succeeded *Constantine*, as his next *p. 181.* *Kinsman.*

In the Year *894*, the *Northymbre*, the Men *An. 894:* of the North of *Humberathigeseald* gave Oaths, or Swore to King *Alfred*, which was manifestly Swearing *Allegiance.*

In the Year *897*, *Wulfric* the King's Gene- *897.* ral *Dyed*, who was also *Waelb Gefera*, Earl of *Britain*, which Manifests *Alfred's* being accounted King of the *Saxons* and *Britons*; and therein *Monarch* of the whole *Island.*

Farther to clear this, *Simon* of *Durham* says, the King of the *Scots*, the *Cumbrians*, the *Streng- S. Dun. f.* *ledunians*, and all the Kings of all the *Brit- 131.* *tons*, in *deditionen accept*, he took into Subjection.

In his *Reign*, the *Feudal-Law* may appear with great demonstration, to have flourished. The Word *Vassal*, was, as I mentioned above, then in use; And when ever Land was granted out by the King, without any express *Reser- vation*

vation of Service, or a *Military Tenure* arose, and *Homage* as incident to it. For which I have no less Authority, than the Compiler of the first part of the *Register of Abington*, there 'tis entered.

Regist. Ab. Rex Alfredus villam
in Bib. Cor. quæ Appelford appellatur
f. 16. cuiusdam fideli suo pro Ser-
vitio & Homagio suo
nomine Beormodo dedit.

King Alfred gave
the Town called Ap-
pelford, to a certain
Liegeman of his, Beor-
mod by Name, for his
Service and Homage.

The Charter follows there, and has no more of this matter expressed, than that he granted this in exchange, for a place called *Harundun*, with liberty to give, to what Heir of his, or Monastery he pleased, providing, that it should be free from all secular Services, except three, the Common Expedition, Repairing of Ways, and Building Bridges and Royal Forts.

This of the Expedition, many suppose to imply no *Tenure*, because it lay upon all Lands, for the Defence of their Country: But it appears by this instance, and might more fully, that from the grant there rose a *Tenure* of the Crown; and this *Tenure* inferred *liege Homage*; obliging the Person to Serve the King in his Wars, where ever they were, unless special provision was made to the contrary.

And thus it was, long before the time of King Alfred.

An. 901. In the Year 901, that Glorious *English Monarch* Dyed; and as, according to the *Saxon Chronicle*, he Dyed King over all the *English Nation*;

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Nation; the *British* Name, being before that time, changed by consent of all, except only them who were under the Power of the *Danes*; 'tis evident that he was *Monarch* of all, in right; as the then possession of the *Danes*, was an usurpation.

If the *Picts* and *Scots* submitted to them, and assisted to continue that Usurpation; and that came Afterwards to be removed; of course they fell back to their former Subjection to the *Crown* of *England*. But, being Zealous for their *true Honour*, I will rather believe that they, to their Power, assisted the *English*, in re-uniting that part which had been under the *Danes*, to the *Crown* of this *Empire*.

That the *Danes* and *Scots*, with the rest of the Inhabitants of the whole *Island*, as they of right owed Subjection, payed it to the true Successor to *Alfred's* Power and Glory, is so plain, that I wonder any question should be made of it.

C H A P. XVII.

An account of the Scotch Homage, from Edward the elder, Inclusive, to the Reign of King Edgar.

THO' hitherto, I have been obliged to travel, in path, which the preconceived Opinions, of Learned Moderns, had made, yet more dark and thorny, than they left them by the Saxon Writers; who very unwillingly drop'd any thing, of the true British Story: Now we come into a frequented Path, which 'tis strange, any unbiassed Man should miss.

Edward, a Saxon Historian, received by Sir T. C. Gays, Edward, Successor of the Monarchy, Son of the abovementioned King, is Crowned, *ipse stemmate regali a Primatis electus*, he being elected by the great Men, as he was of the Royal Stem.

Ad. huc The wise King Edward I. and his Council, *Rot. Claus.* having been my warrant, for going so far *29. E. I.* backward, I may well still pursue the path *m. 10. d.* they left traced out, for Generations to come.

Having omitted instances of the Subjection of those, who inhabit the part now called Scotland, from King Arthur's time, till the full restitution of all the rights of this Imperial Crown, under Edward the elder, they say,

Scot-

*Scotorum, Cymbror, &
Stragwallorum Reges, sibi
tanquam Superiori Do-
mino Subjectos habuit.*

He had the Kings of
the Cimbrians, the Scott,
and the Stragwellsh Sub-
ject to him, as to their
Superior Lord.

Not to heap Authorities upon a matter,
wherein our antient Authors carefully follow
the *Saxon Chronicle*, I shall content my self
with that, and the *Scotch Register of Mail-
ros*.

The *Saxon Chronicle*, speaking of his March- *An. 934*
ing, with his Victorious Army to *Pencland*, in
Darbyshire, says,

*And him to fædero & to hlaforda Scotta cyn-
ing, & ealle Scotta theod, & Regwinald, & Eadul-
fes sunu & ealle tha the on Norðhymbrum bugeatb,
negeter ge Englisc, ge Denisc, ge Northmen ge
oðer, eac Stræledweala cying, & ealle Stræled
Weallas.*

As all these chose him, for Father and Lord,
the King, as well as People; 'tis evident, that
the Kings did Homage at the least, for their
Kingdoms, and the People Swore Allegiance.

But 'tis observable, that, to that very Day,
the *Stræled-Welsh*, who were the *Cimbrians*,
as has appear'd from *Ethelwerd*, had a King of
their own; but the Homage don by the King
of Scots, and the Allegiance Sworn by his Peo-
ple, was without any relation to *Cumberland*,
or any other part within the *English*, or *Danish*
limits, which took in all *Pictland*.

N

This

This removes all colour, from the Possession the Scots have had of *Cumberland*, as if that were the first ground of *Fudal Homage*, to the Crown of *England*.

p. 160.

Sir T. C. says, the Scots always pretended a Right to *Cumberland*; and there he would have it thought, that their Kings Submitted to pay Homage, for the sake of quiet possession; yet that he may seem to yield more, than he was in strictness obliged to; he afterwards owns the Scots, did always owe Homage for *Cumberland*.

p. 193.

p. 393.
No King
of C.

But leaving them to find a *Scotch Prince* of *Cumberland* of that time; lets see what their Chronicle of *Maitros* says of this Submission.

Cron. de
Maitros
De An.

920. Cum
tota gente
suâ Rece-
runt homi-
nium.

" *Dovenald*, the Son of *Constantin*, King of the Scots, with all his Nation, and *Reinold* the King of the Danes, inhabiting *Northumberland*, and King *Sibtric*, did Homage to King *Edward*.

That Chronicle, soon after calls *Sibtric*, King of the *Northanymbrians*; but having mentioned a King of the Danes, who was beyond dispute, possessed of the greatest part of the *Northanymbrian* Kingdom; the other part was certainly under a *Welsh King*.

Sir T. C.
p. 47.

Upon this occasion, it may be some diversion, to observe how Sir T. C. exposes himself; while he thinks to run down all that ever conveyed to us, the History of things passed.

" This, says he, must be confessed, that almost all of those, who wrote the English History, till within this 100 Years, were
" Monks,

" Monks, and followed whatever they found in
 " former Histories, or MS. lest they should de-
 " gate from the Honour of their Country, so that
 " they made it a matter of Religion, to vary in the
 " least from them. As for example, let Florence
 " of Worcester, be supposed the first who wrote
 " of this Homage and Fealty; for I believe
 " he is the very first, whom our Neighbours
 " can produce, William of Malmesbury and
 " Henry of Huntington, who were almost Con-
 " temporaries followed him, as did also Roger
 " Hoveden, Matthew of Paris, Thomas Walsing-
 " ham and Matthew of Westminster, the first
 " leading his Followers into an Error; as we
 " see among Cattle, that if one break over
 " the Ditch, the rest follow, and conceive,
 " that they may lawfully do so, when they
 " have the Credit of their Predecessors, to Sup-
 " port them. To this may be added, that
 " they Discourse of things, which not only
 " hapned before they were Born; but at a
 " much greater distance of time, when mean
 " while, they have nothing to make good their
 " Point. For what is it, which others then,
 " and they now, may not Forge, concerning
 " things which were done many Ages before?
 " If as we say in Court, they produce no other
 " cause of knowledg, but *bearsay*, and *deceitful*
 " *Fame*, which grows as it runs, and of a Flie
 " becomes an Elephant: Moreover, in those
 " Writings of the Monks, there appears a migh-
 " ty Ignorance of our Affairs; and seeing they
 " do not so much as know the Names of our
 " Kings, they can far less be acquainted with
 " their Actions. In the Catalogues of the
 N 1 " Kings

"Kings of Scotland, there's neither *Iresius* nor
 " *Rinaldus* to be found, but those *Monks* write,
 " that both of them performed *Homage* to the
 " King of England.

Sibrie and *Iris*, being plainly the same, and
 the Son of *Eadulf*, *Florence* of *Worcester*, and the
 rest followed the *Saxon Chronicle*, to which
Florence often refers; but Sir *Thomas Craig's* im-
 putation of Ignorance, to our Historians, turns
 upon himself, and argues how little the *Scotch*
Writers are to be relyed on, who pretend that
 the *Scots* were then possessed of any of those
 parts, within the now English Bounds; and
 shews how they are put to it, to stave off
 the proofs of the *Homage* due for the King-
 dom of *Scotland*, when they would make late
 invented Catalogues of Kings, and Traditions
 sprung up, since that Kingdom has been Trans-
 planted from *Ireland*, to ballance express Au-
 thorities of the Times; in which, as Sir *Tho-*
mas Craig owns, the later Writers made it
 matter of Religion, to vary in the least, from
 what they found in former Histories and
MS.

Cron. de
Mailros,
An. 926.
Adjecit suo
imperio.

But one would think this is put beyond
 Possibility of cavil, since one of the express
 Authorities, is the *Chronicle* of *Mailros*, to which
 they must be beholden for the truest Cata-
 logue of their Kings, residing either in *Brit-*
tain, or *Ireland*.

To proceed from *Edward* the elder, to his
 Son and Successor *Atbelstan*, he, according
 to the *Scotch Chronicle*, upon the Death of
Sibrie, added the Kingdom of the North-
 anbyrn-

anhymbrani, to his Empire, *Guthred*; *Sibirie's* Son, being driven out.

Then mentioning *Atbelstan's* Conquering and putting to Flight *Constantine*, King of the *Scots*, and other Kings, 'tis added

*Qui pacem ab eo petentes,
firmatum cum Sacramento
foedus cum eo pepigerunt.*

Who begging Peace of him, made a League confirmed by Oath.

That this was an Oath of *Fidelity* to him, as *Superior Lord*, according to the former recognitions of the *Scotch Nation*, no Man can question.

And this alone, were ground enough for *Rot. Claus.* believing King *Edward* the first, when he af- 29. E. I. fured the Pope, that *Atbelstan* his predecessor, had constituted, that *Constantine* King of *Scotland*, to Reign under him.

I could heap Authorities to confirm this, but shall content my self with the *Saxon Historian Ebelwerd*, the Register of *Durham*, and some *Charters*, of many to the like purpose.

Ebelwerd, speaking of King *Atbelstan's* Victory over the *Danes*, adds *Ethelm. f. 482.*

*Nec non colla subdunt
Scoti, pariterq; Picti uno
Solidantur Britanidis ar-
va.*

And also the *Scots* submit, and in like manner the *Picts*; the Fields of *Britain* are consolidated in one.

Sir T. C. This is one of the Historians, to whom Sir
p. 39. Thomas Craig himself appeals. The Register of
the Church of Durham, says

*Præd. Monarcha Eshel-
stanus Ludwallum Re-
gem wallanorum & Con-
stantium Regem Scotorum
cedere regnis coegit, quos
tamen non multa post mi-
sericordiâ motus Secun-
dum antiquum Statum
sub se constituit regnatu-
ros.*

The said Monarch,
Eshelstan compelled
Ludwal King of the
Wallanes, and Constan-
tius King of Scots, to
quit their Kingdoms;
whom however not
long after, being mov'd
with Compassion, he
appointed to Reign un-
der him, according to
their Ancient State.

This King of the Wallanes, who is named
before the King of the Scots was plainly the
King of the Stracled-Welsh, of which Comber-
land, was the head, or Seat of Power.

And the Constituting them to be Kings un-
der him, was but according to the *ancient State*
of Subjection to that Imperial Crown, of which
Eshelstan was rightfully Possessed.

^b That Register goes farther, as to the King of
the Scots, that he gave his Son, to the King
of England, as an Hostage, and Swore Fidelity
to him.

(a) Mon. 1. vol. f. 40. Ex. Hist. Dun. 66. in Bib.
Bodleiana. (b) Vid. Sir T. C. p. 204. His weak des-
cants, upon the Word Deditio, or Surrender, used by some
Authors.

In the Register of *Abington*, a Charter, according to the bombast of that time, is said to be granted, "in the 52 Year, since that glorious King of the Saxons had Royally Governed most Nobly, and the third Year after, by the sweet benevolence of the Creator doing wonders, he had authentically received the Government of the Sceptral rod of the *Northanbymbrians* and the *Cumbrians*." Regist. in Bib. Cor. f. 18. b. Au. 930.

Being thus possessed of the whole Power of *Britain*, he Subscribes that Charter.

"I *Athelstan*, King and Ruler of all *Britain*, and by God's Grace, Governour of the rest of the Provinces.

This Charter agrees exactly with the *Saxon Chronicle*, which places the expulsion of the King of the *Northanbymbrians*, in the Year 927. An. 927. The Charter shews, that then there was a King of the *Cumbrians*, wholly distinct from the *Scots*: the Victory over them, according to the *Chronicle*, was not till the Year 934.

But the *Chronicle of Mailros*, following some other account of time, makes *Constantine* King of the *Scots*, to have been overcome, in the Year 936, whom it agrees to have been one of the Kings.

*Qui pacem ab eo petentes, firmatum Sacramen-
to foedus cum eo pepo-
gerunt.*

Who Begging peace of *Athelstan*, made a league with him, confirmed by Oath.

This being an Oath, given by Conquered Princes, was an Oath of Subjection, or *lige*

Homage; and this was not upon the account of any additional grant, which if there had been any, would certainly have been mentioned in that *Scotch Register*; and therefore was manifestly, upon a new investiture, with the Kingdom of *Scotland*, which had been forfeited for Rebellion, against the Superior Lord of the *Fee*.

Before this was now granted out, *Ethelwerd*, who cannot be denied to have been fully apprized of the truth of the Fact, assures us, that the whole *Fee* was Consolidated under the *Monarch of Britain*.

And all other Kings within the *Island*, according to the *Register of Durham*, were Constituted by him, as his *Viceroy*s: Sir *Thomas Craig* therefore was very unadvised, in affirming, that the principal hinge of the Controversy, turns upon *Athelstan*.

Sir. T. C.
p. 188.

"He freely grants, that the King of the Scots paid *Homage* to *Athelstan*; but then says "he, the point in controversy, must now be, "whether the same was performed for the "Kingdom of *Scotland*, which until that time, "was Free, or for those Provinces, which he "received from *Athelstan*, or had enjoyed in "England before.

p. 198.

As he durst not trust the Question, without an unfair clog upon it; he begs the Question, of the supposed former Freedom of *Scotland*, the contrary to which has appeared above. And he begs it to be believed upon his Credit, that the History is plain in it self; that *Athelstan* having overcome the Prince of *Scots*, took from him the Provinces of *Cumberland*,

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berland, Northumberland and Westmoreland, but could not restore Northumberland at that time, because it was possessed by the Danes.

That this is perfect Fiction, is evident; for,

I. The *Saxon Chronicle*, and all our English ancient Histories, agree that none of those parts, were in the Hands of the Scots, before *Atbelstan's* Victory; and therefore could not have been restored to them.

II. From the Year 914, to the end of *Atbelstan's* Reign, they evidently continued in the same, or like condition, excepting the small time, that they continued in *Atbelstan's* hands, undisposed of, till he granted Investiture to the several Princes; and particularly to the King of the Scots, of his then narrow Bounds, distinct from the whole Northanbimbrian Kingdom, possessed by the English, Danes, and other Northern Men; within which Kingdom, was part of the Dominion of the King of the Straccled Welsh, who had Cumberland, with the Scile of King of the Cumbrians.

*Cron. Sax.
sup.*

III. The Histories of the Times are positive that *Edmond*, not *Atbelstan*, gave Cumberland to *Malcolm* the Scot.

IV. That this must have been so, may appear, upon comparing the *Saxon Chronicle*, with that of *Mailros*; for as the *Saxon Chronicle* shews, that *Atbelstan* Dyed in the Year 941; that of *Mailros*, shews that *Malcolm* was not King, till the Year 943; nor had Cumberland till two Years after,

after, when *Edmond* Conquered that Land, and *comendavit* put it out, under the terms of *Homage*, to King *Malcolm*.

An. 943. Having *Polydore* on his side, Sir T. C. thinks, he is to be justified, in charging our Historians with *Ignorance*, *Rumors*, and *Malice*; in ascribing to *Edmond*, what he will have, but a repetition of *Atbelstan's* Victory.

Atbelstan, having by the Year 934, fully restored the Crown, to the possession of its antient Right of *Superiority*, and *direct Dominion* over all the *Kings* within the *Island*; justly asserted, and published his Title in his *Stile*.

Mon. r. In one of his Charters, without addition, which might seem to lessen his *Stile*, he uses that of *King* of all *Britain*.

An. 937.

In another.

Bib. Cot.
Reg. Ab.

"King and Chieftain of the whole King-
dom of *Albion*.

In an other.

Cart. Orig.
in Bib.
Cot.

"*Bastleas*, or Emperor of the English, and
equally Rector of the whole British World.
In an other.

"King of the English, and *Curiagulus*, or
Governor of all *Britain*.

Then Subscribes, *King* of all *Britain*.

That this was not a vain assumption of his, appears by a Charter of King *Edgar*, who says of his Predecessor *Atbelstan*.

Rot. Cart. *Primus Regum Ang-*
5 E. 2. m. lor. Nationes qua Bri-
12. n. 25. tannian incolunt sibi ar-
3 E. 3. mis Subegit.
m. 10. n.
23.

He the first of the
Kings of the English,
brought under him by
Arms, the Nations
which inhabit *Britain*.

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(a) Bib
(b) E
E. R

From whence 'tis not to be inferred, that he was the first, who brought under the *Scots*; for that, as appears above, his Father *Edward* had done, tho' 'tis not so plain, that all *Wales* had been subdued by him.

The right to the entire Monarchy, which *Atbelstan* was in full possession of, his Successor *Edmund* kept undiminished.

Tho' E. I. in his Letter to the *Pope*, passes over *Edmund's* Reign, the Writer of the Life of *St. Dunstan*, says of him, " *Atbelstan* being Dead, his Brother *Edmund*, Imperij Monarchiam suscepit, " took upon him the Monarchy of the Empire.

In a Charter of his, he is Stiled
b King of the English, and other Nations, Inhabiting round about.

In an other.

c King of the English, and Rector and Governor, of the rest of the Nations round about.

The *Saxon Chronicle* calls him " Lord of *De An.*
" the English, Protector of the *Maga*, which 942.
" generally is taken for Kindred; but there
" must be meant of Neighbouring Nations or
" Kings, and the doer of Famous deeds.

It shews that in the Year 944, he subdued *An.* 944.
the *Northanbymbrians*, and drove out two Kings,
Anlaf, the Son of *Sibtric*, and *Reginald*, the Son
of *Guthferth*; whom no Man will believe to
have been *Scots*.

(a) *Bib. Cot. Vitellius* vica S. D. per Osbernium Dorob.

(b) *Evid. Eccles. Cant. inter Scriptores decem*, f. 278.

Re Regist. Ab. (c) *Man.* 1. vol. f. 15.

An. 945.

One that
was to go, or
ride along
with him.

In the next Year, he *ofer-bergoðs*, over-run with his Army, all *Cumberland*, and *bit let* did let, not give it to *Eal Malcūme* King of *Scots*, on condition to be his *Midwyrhta*, or *Rad-Knights*, both on Sea and on Land.

This is the first time, that the *Homage* and *Allegiance* due from any Body in those parts, expressly required, Sea, as well as *Land Service*.

But 'tis a Strange conclusion, that is made, as if no *Land Service* was due before, because both were then required: Or that this, if it lay upon the King of *Scots*, by reason of *Cumberland*, and upon the People there, exempted him, as King of *Scotland*, and that People, from all former Duty.

Besides, to take away all possible subterfuge, under this new Grant of *Cumberland*, the very next Year, after it had been granted, the immediate Successor *Edred*, united all the *North-umbrian* Kingdom, to the Crown of *England*; and yet the *Scots* immediately gave Oaths to him, to do what he would have him.

Cron. Sax.

This being so long, before the *Scots* have any Historian, who has laboured to cover the Obligation of *Homage* and *Allegiance*, under which that Prince and People lay; 'tis not to be wondred, that among them, *Cumberland* should pass for one of the Counties, which their imaginary Kings were possessed of 300 Years before Christ.

Since, not only our Historians of the times, but Charters, are express, that there were Kings of the *Cumbrians*, before ever a King of *Scotland* had right there, and that, as those Kings were under our Monarchs, upon Expelling them, it was granted by *Edmund* to *Malcolm*, and

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and all the *Scots* Swore Allegiance, after *Edred* had taken the *Northanhymbrian* Kingdom into his own Hands; what can the *Bishop* of *C.* and other *Sir T. C.*'s admirers say, to justify his Assertion, that there was never any King of *Cumberland*, but only the eldest Son of *Scotland*, was called Prince of *Cumberland*? P. 393.

I desire it may not be forgot, that the very next Year after *Cumberland* was first under the Government of the *Scots*, all the *Northanhymbrian* Kingdom, and *Pictland* in particular, was held as united to the Kingdom of *England*; and therefore we must come farther down, to look for the ground of the King of *Scotland*'s Claim to *Lodeny*, now the three *Lothbians*, which I shall soon find for them. But as to *Northumberland* and *Westmerland*, I doubt there must be a farther search downwards.

I shall not stop here, to observe several Grants of Lands, made by *King Edmund*, reserving nothing but *Homage*, one of which is to his faithful *Vassal*, for his faithful Obedience, or Service, with express mention of Tenure. An. 9.

To his Successor in the English Monarchy, *Edred*, as *Edward* the 1st. and his Chronicle held, "the *Scots* submitted without War, and "Swore due Fidelity to him; one *Iric* being "appointed King over them.

This appointment was plainly by *Edred*. Cron. Sax.

This was the very next Year after *Edmund* An. 946.

had given *Cumberland* to *Malcolm*: As this was part of the *Northanhymbrian* Kingdom, it must be thought that *Edred*, who re-united that Kingdom to the Crown of *England*, had it in its full extent, for certain, without regard to any Land within those Bounds; the whole Kingdom

dom of the Scots submitted to *Edred's* Monarchy; for the *Saxon Chronicle* tells us, that he had Reduced all *Northumberland*, the Land of the *Northanbymbrians*; to *Gerbealde*, him he reduced to his Empire or sway, and *Scots as him atbas Sealdan that his Woldan eal, that he woldes*; "The Scots gave him Oaths, that they would, all that he would.

Which was Allegiance with a witness.

An. 949. The *Northanbymbrians* being fond of *Danish Kings*, or at least of Kings from among themselves, upon *Anlaf's* return after he had Abdicated, received him again for King; then that People turned him out again, and took *Iris* the Son of *Harold*; who according to the Authorities, which Satisfied *E. I.* and his Council, had that Kingdom of *Edred's* Gift.

An. 952. Yet in 954, they drove out *Iris*, and then *Edred* took that Kingdom into his own Hand. And thus it was re united to the Crown of England.

Ethelward, says of that King

Ethelw. c. 7. de Regi- Cui Northymbrij Subji-
ciuntur cuncti, nec non Sco-
mine Ead- ti juramenta confirmant,
red Regis. immutabilemque fidem.

To whom all the *Northanbymbrians* are subjected, and also the Scots confirm, or renew their Oaths, and immutable Faith, or Fidelity.

De An. 946. Accordingly the *Saxon Chronicle* says, the Scots him atbas sealdan, Sealed him Oaths, some as copies, Sworon, as others, that they would all that he would. But the true reading seems to be *Sealdan*, relating to Charters, Testifying their Subjection.

But

But the Scots had then no part of it within their Kingdom, not so much as *Pictland*.

As the State of the Fact evinces, that *Edred* was truly *Monarch* of all *Britain*; his Style was accordingly.

King and Chieftain of all *Albion*.

I find a Charter of his, wherein, he Stiles himself, "King of the *English* and Governor and Rector of all the rest of the Nations round about.

This is a Grant of *Beorhtan* will to one *Aethelgard*.

Ad eo fideli Ministro ac Militi, in sua voluntatis & donationis obsequio, satendo ac implendo paratus ac promptus fuit. My faithful Officer and Soldier, who was ready and prompt, in confessing and performing the Obedience of his Will, and Gift, or Resignation, of himself.

This Land was given with Power, to leave to what Heir he would, without any obstacle, Free in all respects, except the *Expedition*, and repairs of *Forts* and *Bridges*.

No Man can deny but this *Knight* held of the King in Chief, by *Knights Service*, and his confession and performance of obedience, was *Homage*, upon being invested with that Fee.

Eadwig, Succeeded in the Year 955. In the next Year, I find his Predecessor's Stile continued in substance, with very small change of Words.

(a) Mon. 1 Vol. f. 842. *Primicerius*. (b) *Charta Collecta per Patricium Junium Bibliothecar. Regium. Scoto Britannum penes Autorem. De An. 947.* (c) Mon. 3. Vol. f. 120.

I *Edwys*, King of the Nations of *Albion*.

In an other Charter, he is Stiled King of the *English*, and of the People of all Nations of *Albion*.

In another, he has the very same Stile with *Edred*, Rex & *Primicerius totius Albionis*.

Reg. Ab.
in Bib. Cor.
An. 956.

In one of his Charters, his Stile is King of all *Albion*; this is said to be corroborated by *Edgar Cluo*, the same Kings *adelphus*, the Greek Word for Brother latinized.

In one of his Charters, he Grants Land *Cui-dam e Homini meo*, to a certain Homager of mine. And several of his Grants infer *Homage*.

(a) *Regist. Ab. Bib. Cor. Claud. B. 6. f. 59. CunRige-narum Albionis populorum.* (b) *Cart. Orig. in Bib. Cor. An. 962.* (c) *Regist. Ab. vid. Sup. Osbernus Autorem vite Sti. Dunstani Bib. Cor. Cleopart B. 13.*

C H A P. XVIII.

Large proof of the Superiority of the Crown of England, and of the Feudal-Law, in King Edgar's Reign.

Omnium
electione
ordinatus

E *Dgar*, in the Life time of *Edwin*, was King of the *Mercians*; and upon his Brother's Death, was chosen *Monarch* of the *Island*; an Author of, or very near the time, shews, that because his Brother acted very foolishly in the Government committed to him, he was universally Deserted by the *Mercians*, and *Edgar* set up, and afterwards ordained King, from, or by reason of the general *Election*; whereby that Author accounted him *totius Imperij Monarcha effectus*, made *Monarch* of the whole *Empire*.

They

They who believe our *British Histories* Fabulous, in all that they say of King *Arthur*, would think a lying Spirit possessed all the Authors, and even the Records, of King *Edgar's* Time.

His great Successor *Edward I.* dwells upon his Story, as if he proposed his example to animate him to the like pursuit of Glory. When, says he, *Edgar* King of *England*, made *Kinady* ^{Rot. Clauf.} King of the *Scots*, and *Malcolm* King of the *Cumbrians*, *Makkus* King of a great many Islands, and five other under Kings, *Dunewald*, &c. to Row him over the River *Debe*; he is reported to say, his Successors, would glory, that they were Kings of the *English*; since they enjoyed such a *Pre-rogative*, as to have the Power of so many Kings Subject to them. ^{29 E. L.}

The *Saxon Chronicle* says of him.

Cron. Sax.

"He conciliated Honour to God, and Lov'd
"God's Law, and consulted the Peace of his Peo-
"ple, the best of all the Kings that were before
"him, within the memory of Man: Moreover
"God so assisted him, that Kings and Earls dili-
"gently Obeyed him, and followed his Orders
"in whatever he would; with out Battle he Go-
"vern'd all things at his pleasure.

The Writer of the Life of St. *Dunstan*, says of King *Edgar*, that immediately upon his being Elected and Ordained,

*Cæpit passim improbos
opprimere justos quoq; &
modestos puro pectore dili-
gere, Reges atq; Tyrannos
circumquaq; sibi subdicere.*

He began every where *Osbernus*
to oppress, or beat ^{sup.}
down the Wicked; sin-
cerely to Love the Just
and Modest; to Sub-
ject to him Kings and
Tyrants, in all places
round about.

O

Sir

Sir T. C.
p. 216.

Sir T. C. agrees, that the Continuer of Bede's History says, that *Kennadus* King of the Scots, and *Malcolm*, King of Cumberland, did bind themselves to *Edgar* by a perpetual Oath; but would have this Oath of Allegiance to pass for nothing, since Homage is not named.

A short Chronicle of the *Anglo Saxon* Kings of great antiquity, says of *Edgar*, to whom eight Kings, viz. a *Kynod* King of the Scots, and *Malcolm* King of the *Cumbrians*, and *Maccus* of very many Islands, and five more were Subject.

In one of his Charters he is Stiled.

↳ *Basileus*, or Monarch, of all Britain, and Subscribes *Basileus* of all *Albion*.

I could produce many more of his Charters, with the like Stile; but can not omit referring to a Charter more at large, than is proper here, which I had occasion to Cite, in proving the dependency of Ireland, upon the Imperial Crown of England, long before the time of *Henry II.*

There^c *Edgar* calls himself, "King of the English, and Emperor and Lord of all the Kings of the Island, which lye about Britain, and all the Nations that are included in it."

And he Subscribes, King of the English, and Emperor of, or over the Kings of the Nations.

In another he says, he, "under the Heavenly King, presided over the Kingdom of Great Britain, and Subscribes, *Basileus*, or Emperor, of all *Albion*."

(a) *Bib. Cor. Damitian, A. 8. Cui octo Reges, Scil. Kynodus Rex Scotor. & Malcolmus Rex Cumbrior, &c.* (b) *Rot. Cars. 8 E. II. m. 20. n. 37. per Ab. & Conv. De Thorney, An. 973, & 5 E. 2. m. 12. n. 25.* (c) *Vid. The History and Reasons of the Dependency of Ireland, &c. ed. An. 1698. p. 15.* (d) *Ingulf. f. 502. b. An. 970.* In

In another, he Styles himself *Basileus*, or Emperour of all *Albion*, and also of the Neighbouring *Kings*.

In one ^a of his Charters he Styles himself *King* of all *Britain*, which is Subscribed by *Kinedius*, or *Kinedy*, King of *Albany*, and *Mascusius*, or *Macus*, Archpirate.

I find an other ^b Charter of this great King's, wherein he Styles himself, "*Basileus*, or Emperour of the beloved Island of *Albion*; enjoying in quiet Peace, the Scepters of the *Scots*, the *Cumbrians*, and the *Britons*, and of all Regions every where about. The Seventh, who Subscribes as "*Duke*, and recognizes this Title, is *Malcolm*."

This very *Malcolm*; who Subscribes here, as one of the *Earls*, Subscribes another Charter as King of the *Cumbrians*; which will put an end to the Imagination, as if there was no King of the *Cumbrians*, in, or near those Times; but that the eldest Son of the King of *Scots*, was always ^c Prince of *Cumberland*.

The Original ^d Charter now to be seen, follows in these Words.

In nomine Sta. & individuae Trin. Ego Edgarus Rex & Basileus totius Angliae, admonitus & Sta. Dorob. ecclesiae antistitis Dan stant precibus sapienter exortatus, red-

In the Name of the Holy and undivided Trinity, I Edgar, King and Emperour of all England, being often extorted, by the admonition and entreaty of

(a) Mon. 1. Vol. f. 17. An. 971. (b) Cart. Antiq. in Turri Lond. B. n. 11. (c) Vid. Sir. T. C. p. 199. Whom the unlearned English Writers, call King of Cumberland. (d) Vid. Cart. Orig. in Bib. Cot.

do & Sta. Dorob. Eccl. & Monachis ib. Deo Servientibus in pura elemos. Port. & villam de Sandwich, eisdem Mon. olim ablatam, cum omnibus libertatibus & Consuet. Regijs ad Sand. Port. quæ ego aliquando habui, ex utraq; parte aquæ, cujuscunq; terra hinc vel inde fuerit. Confirmo eis omnes Mansiones quas habent in villa Sandwich, quæ illis collatæ sunt in pura & perpetua Elemosina fidelibus. Unde volo ut nullus ibidem habeat aliquid jurisdictionis tantum Ministri Nostri Dorobernij. Quicumq; hanc meam largisiam Munificentiam interrumpere aut violare præsumserit, indignationem dominæ nostræ Mariæ, & eor. omnium qui in Dorob. Eccles. requiescunt Sentiant, nisi ante mortem emendati fuerint.

Whoever shall presume to interrupt, or violate this my large Munificence, let them feel the indignation of our Lady Mary, and of all those who rest in the Church of Canterbury, unless they make amends before their Death.

Ego Edgarus Rex totius Angliæ, codicillo meo

Dunstan Prelate of the Holy Church of Canterbury; Restore and Grant, to the Holy Church of Canterbury, and the Monks there, Serving in pure almoign, the Port and Town of Sandwich, of old, taken from them, with all Liberties and Royal Customs, belonging to Sandwich, which I, or any of my Predecessors, at any time had, on both sides of the Water, whosoever the Land be on this side, or that. I confirm to them the Houses which they have in the Town of Sandwich, which were bestowed on them by the Faithful, in pure and perpetual almoign. Wherefore I will, that no body have any right there, except only our Officers of Canterbury: Who-

I Edgar King of all England, have with my
signum

signu
manu

Eg

rum,

Eg

rum,

Eg

Subs

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signum S^{ae}. Crucis propria manu apposui.

Ego Kinach Rex Scotorum, Subscripsi.

Ego Maccus Rex Insularum, vidi.

Ego Dunstan Dorob. Arch. Subscripsi.

Ego Estbelwoldus Winton. Antistes, consensi.

Ego Malcolm Rex Cumb. Subscripsi.

Ego Dufnal vidi

Ego Oskitellus, Ebor. Arch. Subf.

Ego Osualdus Wig. E.p.

Ego Kenenuardus Ab. Subscripsi.

Ego Jacob Subregubus Signum posui.

Ego Inkill Subregulus Subscripsi.

Ego Siferdi Subscri. S. crucis apposui in festo Pentecostes in Civ. ad Aediaemanni.

own Hand, set the sign of the Cross to my Codicil.

I Kinach King of the Scots, have Subscribed.

I Maccus, King of the Islands, saw it.

I Dunstan Arch bishop of Canterbury have Subscribed.

I Estbelwold Bishop of Winchester have Consent.

I Malcolm, King of the Cumbrians have Subscrib.

I Dufnal saw it.

I Oskiril Arch-bish. of York, have Subscribed.

I Oswald, B. of Worst.

I Abbot Keneward have Subscribed.

I Jacob, an under King, have put my Mark.

I Inkill, an under King, have Subscribed.

I Siferdi Subscribing, have put to it the Sign of the Cross, on the Feast of Pentecost in the City at Aediaemanni.

This Charter being pregnant with many considerable matters, I cannot but touch upon them.

I. Besides other undoubted evidences of its being an *Original*, that is, an *Exemplification* of that which first passed, and was *Registered* in the King's Court; one may observe the true mark of the simplicity of the time, in threat-

ning

ning the Violators with the Indignation of the Virgin *Mary*, and the Saints who Rest in the Church of *Canterbury*.

II. Here is a strong proof of the great antiquity of Tenures. This Town having of *Old* been granted to the *Monks* in *Frankalmoign*.

III. Tho' they held in *Frankalmoign*; all the Land on both sides the Water, from of *Old*, was held of them, and they had a *Royalty*, and *regal Services* from the owners.

IV. This which was a *Borough*, and represented in the Great Councils, then and long before, held from of old of the Church: And of it self, were enough to answer that false and base *Treatise of Cities and Boroughs*, which *Dr. Brady* durst not, in his Life time, trust in the Hands of any, but such as he believed would slavishly lick up his Spittle, but is now recommended by the *Gazetteer*.

Indeed by chance, I formerly gained an opportunity, to Transcribe so much as I found needful, to animadvert upon, which Animadversions, with full proof of the Rights of Cities and Boroughs in the *Saxon* times, perhaps may soon see the Light.

V. To Silence all Dispute, whether the eldest Son of the King of *Scotland*, was of right Prince of *Cumberland*; *Malcolm* was King of *Cumberland* while an other was King of *Scotland*.

VI. Tho' another was King of *Cumberland*, without any relation to the Crown of *Scotland*, the King of *Scotland* attended in King *Edgar's* Court, among the rest of his *Homagers*.

VII. That they all were there as *Homagers*, is more apparent, in that it was at *Whinside*, when *de more*, or from ancient Custom, from King *Arthur's* time, the King's Barons, or *Homagers*, used to

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to meet in his Court, for hearing Causes, and advising in State Matters.

VIII. The place where this Court was held, was *Aedimanni*, or *Acamanni*, in the Saxon Chronicle *Acamannescesters*, the *Bath* where that King held a Feast at *Whisfuntide*, in the Year 973. Vid. Cron. Sax. An. 973.

From thence the King went to *Laegceastre*, which the Publisher of the Chronicle takes to be *Westchester*, but with Mr. Luyd, is *Warric*, the City of the *Legions*. Thither the Chronicle says, *six Kings* came, and a League being made, all promised to Act together with him, by *Sea* and *Land*.

This was doing *Homage*, or engaging to be *Liege-men*, which the King of *Scotland* and the King of the *Cumbrians* and others, if they were none of those six, effectually performed, in giving their attendance, and concurring with the King in one of the Acts of that Court, where the Charter above passed.

But to put this beyond all controversy, the Register of *Mailros*, where the *Scotch* Antiquaries do not pretend to correct the *Cotton MS*, since Printed, agreeing with the *Saxon Chronicle* in the very Year 973, mentions that King's then second Solemn Coronation, and says, "whom eight Cron. de Mailros An. 973.
"under Kings met, *viz.* *Kineth* King of the *Scots*,
" *Malcolm* King of the *Cumbrians*, *Maccus* of very
" many *Isles*, and five more *Dufual*, &c. as he had
" required them; and Swore that they would be
" Faithful to, and assist him, by *Land* and by *Sea*."

If this was not *Liege-homage*, I would gladly know what more proper Term ought to be given it; but as the dispute is not about Words, but things, if it be said, this was in a strict Sense to be called an Oath of *Fidelity*, or *Allegiance*, I shall not stand for a Word, since an Oath of *Allegi-*

Allegiance is of farther import, than bare *Feudal Homage*.

Tho' the *Feudal-Law* was here long before the *Saxon Monarchy*, the *Feudal-Terms*, supposed to have been brought in by *W. I.* occur oftner in *King Edgar's* time, than before, and are so very plain that tis wonderful Learned Men should overlook them.

Bib. Cor.
Faustina
A. 3. f. 7.
Cart. Ca-
nob.
Westm. u-
niversis
Episcopis
& Baroni-
bus meis.

If *Dr. Hicks*, and others, will pretend to set aside all Charters before the time of *W. I.* as spurious, because of *Feudal Words*, I will undertake to find them work enough. No Man surely will go about to blemish *Sulcard's* Collection of Charters; yet in one of them *King Edgar* confirms former Grants to *Westminster*, and adds of his own, in a Council held there, with his Son *Edward*, *Archbishop Dunstan*, and all his *Bishops*, and *Barons*.

That these *Barons* were all *Homagers* to him, I could prove at large, but may refer to the Judgment above, of the Compiler of the first part of the Register of *Abington*, upon one of *King Alfred's* Charters.

Since, therefore, it is manifest, that the *King of Scots*, and the *King of the Cumbrians*, and others, were of the number of *Edgar's Barons*, as such did Service in attending him at his Court, had submitted to him as their Lord, and engaged to assist him in his Wars, which they confirmed with their Oaths, it must be agreed that they were *Homagers* at the least.

But in truth, this was but *Liege-homage*, it being the Prerogative of the Crown, to demand an Oath of *Fidelity* of all its *Homagers*; whereas other Lords of *Dependent fiefs*, were to have *Homage* without Oath, at the doing the *Homage*.

C H A P.

C H A P. XIX.

Of the Continuance of the Homage from King Edgar's to Cnute's time; and the full Demonstration of the Right of Superiority and direct Dominion in his Reign.

THAT the Right to the Homage of the Kings of Scotland, and of the then distinct King of Cumberland, was lost by Edgar's Successors, Edward, * Ethelred, and Edmund Ironside, cannot be pretended.

Therefore it must needs continue in the Crown of this Kingdom till Cnute the Dane.

Angul-Sexna. In another, Basileus or Emperor of all Britain, (Rot. Cart. 3 E. 3. m. 32. n. 85.) In another, His Stile is Governing the Monarchy of all Albion. Then he Subscribes King of the English. (Rot. m. 10. n. 17.)

* *Vld Cart. Orig. in Bib. Cor. His Stile Rex totius Insulæ. Subscribes Rex & Rector*

According to the *Saxon Chronicle*, he came *An. 1017.* to the whole Kingdom of *England* in the Year 1017. But according to Sir T. C's way of Arguing against the Continuance of the Right to the *Normans*, Cnute could not have this Coming in, as some will have it, by *Conquest*.

I need not stay to shew my Authority, that he was Receiv'd upon a good *Saxon Title*; but it's enough here that the *English* soon Restor'd the Crown to the *Saxon Royal Family*; having made a Law that no *Dane* should Succeed after the last of his Sons that Reign'd here. But whether the Submission to Cnute were freely with

* *Bib. Cor. Cleopat. D. Cronica Bruto ad E. 3. Apud lemore*

Hærdnute, Sec. les Comtes & Barons de terre se Assemblerent, &c.

re-

regard to his Claim of Right, or by Force, the quiet Possession of the *Crown* of *England*, carried with it all it's Appendages.

Knigh-ton, Besides, *Knigh-ton* tells us *Cnute* Celebrated a Par-
Col. 2318. liament at *Oxford*, where the *English* and the *Danes*

agreed to observe the *Laws* of *King Edgar*. Yet I must not suffer *Sir T. C.* to go away with the Triumph of his Assertion, that *Cnute* 'Never

Sir T. C. ' Claim'd any Superiority over *Scotland*, and that
P. 233. ' most of his Letters are extant, where he
' Stiles himself only King of *Denmark*, *England*,
' *Norway*, and part of *Sweden*.

Sir T. C.'s Inference here is one of the fairest that he makes, being grounded upon all which might have occurred to him of that *King*'s Stile.

Yet his Admirers may, if they please, see a Charter of *Cnute* to *St. Edmund's Bury*, where, as Successor in the *English Monarchy*, he used this Stile.

(a) Cart.
Orig. in
Bib. Cot.

I (a) *Cnute* King of all *Albion*, and very many other Nations.

(b) Ead.
per Inspex.
Rot. Cart.
4 E. 3.
M. 24.
N. 58.

(b) In another, He Stiles himself King of the *Island* of *Albion*, and very many other Nations.

(c) Mon.
1 Vol.
f. 276.

In another, *Basileus* (c) or Emperor of the whole *English* Nation, and very many others.

T. Abbot's
Bury.

Cron.?

Saxon.

An. 1031.

Whatever some are oblig'd to maintain, that they may help the Sacred Pedigree of the *Scotch Monarchy*; in *Cnute*'s time they had three Kings at once, who all became Homagers or Subjects to him: for upon his going into *Scotland* King *Malcolm*, him to *Beath*, obey'd him; and two other Kings *Maelbaeth*, or *Macheth*, and *Jemarc*.

* Cron.
de Mailros
de eod.

Ann.

This * *Maelbaeth* may very well have been the

the *Macbeth*, who was sole King in the year 1054, when he was succeeded by *Malcolm* the 3^d. call'd *Cannmore*. But as *Macbeth* is left out of the Descent from *Fergus* to King *Charles* the II. as exhibited by the Lord *Tarbat*; so are both the other Kings: and consequently *Malcolm* did not derive his title to the Crown from any body left seiz'd, but from the Election of the States of Scotland.

See the
Genealogy
in Sir
G. M.

Sir *Thomas Craig* says,

That there were three Kings of Scotland at that time, when *Cnut* undertook the Expedition, is not very probable; their Names not being in the Catalogues of our Kings, nor never so much as heard of by us.

He says *Matthew of Westminster* advisedly forbears Names, but owns they are in *Huntingdon*, and *Caradocus* a Welch Historian. This is full Proof that their pretended Catalogues of Scotch Kings here are meer Inventions: and is but one Circumstance of many, evincing that their Histories, which are all in comparison Modern, ought to have no manner of Credit.

I find that the Laws which were made, or rather Chiefly declar'd in *Cnut*'s time, were by Authority of such National Assemblies, as concluded all People then within the Island. Accordingly he held a Parliament at *Winchester*, to Consult of the State of the Realm, for suppressing Vice, and encreasing Virtue,

See Cor.
Titus,
A. 27.

*Congregatio Primati-
bis totius Angliæ & Da-
niæ*

"The Nobility of all
"England and Daneland
"being Assembled.

I chuse to render *Dacia Daneland*, believing that it related to such parts of this *Island*, as had long been in the Hands of the *Danes*; and might by consent of the *Great Council* be then under *Danish Generals*.

Bib Cor.
Claud.
D. 2.

From the time he was settled in his Kingdom, it may be a question, whether the *Scots* had any *King* in all those Parts. However there is positive Authority, that in his time all *Albany* was Govern'd by a *Danish* or *Saxon* Earl, *Dimase*, or *Dimoc*, his *Heretoc* or General; and *Galloway*, which then was accounted no Part of *Albany* or *Scotland*, by *Earl Warrn*. As may be seen before an ancient Transcript of his Laws.

C H A P. XX.

The Homage done for the Kingdom of Scotland, upon the Grant of Lodeney in the time of Edward the Confessor : And Evidence supporting the Charter of it, which our Historiographer caused to be Engraven.

Not finding the Bounds above alter'd in the time of *Cnut*, or his two Sons *Harold* and *Hardicnate*; I shall take them as such till the 13th Year of the *Confessor's* Reign, when I find *Earl Siward* Earl of the Entire Kingdom of the *Northanbymbrians*; which, as will appear, was not divided till his Death.

The

The Chronicle of (a) *Mailros* owns that (a) *Anno*:
 Earl *Seward* fought their King *Macbeth*, and 1054.
 having put him to flight, Constituted *Mal-* *Vid. Cart.*
colm, as King *Edward* had Commanded. *Orig. in*
Bib. Cor.

Hence it appears that Sir T. C. was not a- *where Si-*
 ware what he offered when he said, (b) " If e- *ward is the*
 " ver any King of the *Scots* was Invested by *first Duke*
 " the King of *England*, we shall not deny but *that Sub-*
 " that the Kingdom of *Scotland*, owes the feal- *scribes that*
 " ty of a *Clyent*, and *Homage* to the King of *King's*
 " *England*; and that the King of the *Scots* shall *Charter.*
 " be accounted his *Vassal* and *Clyent*; and (b) *Sir*
 " bound to all *Services* as such. *T. C. p.*
63.

If *livery* of the *Crown*, by one of the King's *Earls*,
 by order of the King was not an *Investiture*,
 Sir T. C's. Admirers must Coin a new Notion
 of *Investiture*, to Suit his blunders about *Ho-*
mage.

According to the *Confessor's* Law, this was *Archaion.*
 properly an *Investiture* by or from the *Sovereign* *cap. de*
Lord of the *Fee*: for that is express, *Regis offi-*
 that the *Universal* whole *Land*, and all the *Islands* *cio & de-*
 as far as *Norway* and *Denmark*, " belong to *jure & ap-*
 " the *Crown* of this *Kingdom*, and are of the *pendiciis*
 " *pendages* and *Dignities* of the King, and *coronæ*
 " made one *Monarchy*; and one *Kingdom*, *Regni*
 " formerly of *Britain*, and then of the *Britannia.*
 " *Eng-*
 " *lish*.

But 'tis to be remember'd, that at this *Investi-*
ture, nothing pass'd but the old *Kingdom* of the
Picts and *Scots*, without *Pictland*: Which tho'
 it had some time been Possess'd by the *Picts*,
 was then in the Hands of the *English*, as will
 Most evidently appear.

Neither is there any thing of *Cumberland*,
Northumberland, or *Westmorland*.

As to Cumberland, they will not, I take it, shew that the Scots had ever any Title to it, as belonging to the Kingdom of Scotland; or indeed, that any Scot was King, Prince, or Earl of it since that *Malcolm* who was King there in the time of King *Edgar*. That *Malcolm* was dead when *Edward the Confessor* gave Investiture of the Kingdom of Scotland to the other *Malcolm*, whom *Edward the 1st*. and his Council call Son of the King of the *Cumbers*; and what I have produced of the *Confessor's* Law justifies Their adding, that Scotland was Granted to hold of our King *Edward*; for 'twas no more than the implication, of Law, whether express'd or no at the time of the Investiture.

As the *Historians* seldom gave more than the principal Transactions; it must be agreed that the generality of them thought the Investiture was as much as they need take notice of, to shew the Crown of England's asserting its right over the Crown of Scotland; and yet an Original Charter of Homage for the Kingdom of Scotland being yet to be seen under Seal; I shall here set it down, with concurring Testimony to Support it. The Record as English'd by Mr. *Ridpath* is as follows.

Pref. to
Sir T. C.
of Hand.

“ *Malcolm* King of Scots and of the Adjacent
“ *Isles*, to all Christians to whom these Present
“ Letters shall come, Greeting, as well to *Danes*
“ and *English*, as to *Scots*. Be it Known to you
“ that we and *Edward* our eldest Son and
“ Heir, Earl of *Carric* and *Rothsay*, have Re-
“ cogniz'd, that we hold Our Kingdom of *Scot-*
“ *land* and the Adjacent *Isles*, of Our most ex-
“ cellent Lord *Edward*, Son to *Esbelred*, late
“ King of England, Lige Lord of Scotland, and
“ the

" the adjacent *Isles*, by *Liege Homage* and *Fealty*,
 " as our Predecessors and Progenitors are very
 " well known to have Recognized and done,
 " as manifestly appears to us by the *ancient Records*
 " of the *Crown*: And therefore by direct
 " Law, we be come your *Liege-men*, O our
 " most Serene *Lord Edward*, Son of *Ethel-*
 " red, King of *England*, and *Liege Lord* of *Scot-*
 " land and the adjacent *Isles*: and we shall
 " bear *Liege Fealty* to you and to your Heirs,
 " during our Lives, to Live and die with you
 " against all Men, as your Faithful *Liege Sub-*
 " jects. So Help us God and the Holy Judg-
 " ment of God.

" In witness whereof, we have caused our
 " Seal to be put to these Presents, for us and
 " our Son aforesaid at *York*, the 5th. day of
 " *June*, and the 9th. Year of our Reign, in
 " the *Parliament* of our *Liege Lord* aforesaid held
 " there; by the Consent, and with the Advice
 " of *Margaret* our Consort, Daughter of *Ed-*
 " ward; Son to *Edmund Ironside*; *Edgar Atheling*,
 " Brother to our said Consort, and many others
 " of the *Nobility* of our *Kingdom* aforesaid.

Upon the first view of this, 'tis observable,
 1. That this was in a *Parliament* at *York*, where,
 and not further within the *Kingdom*, the same
 King afterwards insisted that he was to do his
Homage.

2. Here is a Notification of the doing this
Homage in the Name of all his Subjects; to
Danes and *English*, as well as *Scots*; which ar-
 gues that he had then some part, which before
 had been in the possession of *Danes* and *English*:
 and if we find what that was, and when Granted,
 it must be agreed, that it will give Light to this
 Matter.

3. The *Homage* here is *Liege*, and mixed with that *Allegiance*, which, as has appeared, was from the Beginning due to the *Crown* of *England*, from all People within the *Island* of *Britain*, or *Albion*.

S. Hist. L.
p. 281.

The *Learned Prelate*, who gives Authority to the Reflections upon Mr. *Rimer*, for causing this Charter to be Engraven, Says in a Volume of My Lord *Longville's*, is *homagium factum, Edwardo fil. Ethelredi. A. D. 1043*.

"This, says his Lordship, is the very same with that Published by Mr. *Rimer*, and will afford new Matter for the Antiquaries to wrangle about; for the date of this without more ado, proves it could not be made by King *Malcolm III*. Though it might be to Edward the Confessor.

I must beg his Lordship's Pardon, if I put him in mind, among other different Computations of the difference between the *Evangelical*, As *Florence of Worster* has it, and the *Dyonisian*, which is just 22 Years; the consideration of which will remove all Objections against either of the Charters.

Vid. Bib.
Cor. 7.
A. 7. where
Edward is
said to
have con-
stituted
Malcolm
King. An.
1035. and
K. Edward
to have
died An.
1047.

An. 1056

1069

22

1043

1043

In the Account of the Register of *Mailros*, Though King *Edward* gave Investiture to this *Malcolm*, in the Year, 1054. either because it was two Years after, before he was fully recognized, *Mackbeth* being yet alive, or before the Letters Patents of *Livery* or *Investiture* were sent from *England*; His Reign was Dated but from the Year 1056. Mr. *Ridpath* makes it in April 1057. But we may well follow the Register of *Mailros* and the Charter of *Homage* now in dispute. Add then nine Years to the first of *Malcolm's* Reign, out of this Deduct 22. which

which is the difference between the Received Accounts; and the *Homage* falls exactly within the Year 1043. according to the Lord *Longwill's* Charter.

Thus we have a demonstrative Evidence of the truth of both Records; one as an Original, the other as an Exemplification. And yet if the Year had been mistaken in the Exemplification, or the Year of our Lord added, when the Ninth was in the Body; it could be but an Error in the *Clerk*, which would not vitiate even the Exemplification. But this is not all, we have a Proof from an Ancient Historian, who chiefly followed one of the Chaplains of *W. I.* and himself lived in the time of *H. I.* which falls in with these as one Tally with another.

Nor yet is this all, but as will appear, in its place, 'tis supported by an incontestable Charter of one of *Malcolm's* Successors.

I shall here only mention part of a Conference between the same *Malcolm* and *Robert*; who was by his Brother *W. II.* sent to *Malcolm*, to perswade him to do the accustomed *Homage*.

Ord. Vita.
lis. F. 701.
De A. 1092

This he scrupled doing to *William* the younger Brother, But said,

"I confess, that when King *Edward* gave me his grand Neice *Margaret* to Wife, he bestowed upon me the County of *Lodeny*.

The now three Counties were then plainly accounted but as one Province.

But our Noble Prelate, and other *Advocates* for the *Ancient Kingdom*, may be like to say; what the Capital City *Edinburgh*, and all *Lodeny* bestowed upon the King of Scots as a new Grant? This is *Forgery* upon *Forgery*.

I must

I must by degrees prepare them to admit all the Light in this Matter: But this is one Argument how much some have been misled by an implicit Faith in Dr. Brady, who will have most of the *Northanhymbrian Kingdom* to have been left out of the *Great Survey*, because it was in the Hands of the *Scots*: When *Lodeny* alone was a Boon with which they rested satisfied in the *Confessor's Time*; and, as will appear, were far from making Encroachments in the time of his immediate Successor, the Victorious *W. I.*

But for farther Satisfaction in this Matter, I *Cron. Sax.* at present shall only refer to the *Saxon Chronicle*, *An. 1091.* which speaking of the very time, with the principal Circumstances of *Robert's Treaty* with *Malcolm*, to perswade him to do Homage to his Brother, says, *Malcolm* went with his Forces out of *Scotland* into *Lothens* in *England*.

The fixing this Point beyond Dispute, I shall respite till the proper time; and in the mean while shall consider the Efforts which have been made against *Malcom's Charter of Homage*.

C H A P. XXI.

The Objections against Malcolm's Charter of Homage for the Kingdom of Scotland Considered, and Refuted.

Objest. 1. **T**HE Evidence that *Homage* was done by *Malcolm* for the Kingdom of *Scotland*, at least without Relation to any other Lands in *England* but *Lodeny*, being positive and clear; all unbiaſſed People will expect something very convincing to vacate such a Record as the Charter above. Mr.

Mr. Ridpath's first Objection after producing the Charter is, that 'tis contrary to all the Forms of Homage Recorded even in the English Histories. Object. 1.

The Historians of those Ancient Times give no Form, but plainly intimate, That our Monarchs exacted such Oaths, to assure themselves of the Fidelity of the Kings of the Scots, and other Subject Kings, as the circumstances of the Times required. Answer.

And Scotland being then first Erected into a Kingdom, with part of England Annexed to it; 'twas but fit that the Homage and Oath of Fidelity should be explicit for the Kingdom of Scotland, tho' as appears 'twas ever implied; the Land Possessed by the Scots, being an Appendage to the Crown of the Monarchy; though the ordinary Administration of the Government in those remote Parts, was in Kings of their own making, and unmaking: Not but that upon occasion, our Kings permitted them to Reign without Investiture from hence.

Another Objection is from the Title or Stile of the then King of Scots, as if never any of the Kings of Scotland were stiled, of the Scots, and adjacent Isles. Object. 2.
Pref. to Str.
T. C.

What I have shewn before of Macens the Arab Pyrate, or King of very many Isles, who, 'tis probable, Maintain'd a Pictish Title; may satisfy any Man in the reason of that Stile's being assumed, from the time that the Monarch of this Island of Albion, instead of granting an Investiture of those Isles to any Descendant from Macens, gave them to the King of Scots: or permitted him to Possess them; without reuniting them to the immediate Government of the Crown of the Monarchy. Answer.

'Tis

Objt. 3. 'Tis Objected with like assurance against the calling the King's Eldest Son Earl of *Carric* and *Rothsay*; when the Eldest Son of *Scotland* was, as is imagined, long before that time Entitled Prince of *Cumberland*.

Ans. As to the Title of *Carric*, that *Carric* was an ancient Earldom before *John*, the Son of *Robert II.* had it, appears above; and I question whether there are any such Records, and other Evidences in *Scotland*, as give a probable Account when that Earldom, or the Earldom of *Rothsay* first began: but as they admit the *Feudal Law* to have been with them before the time of *W. I.* 'tis likely that with them, as with us, there were hereditary Earldoms, and Baronies in the *Saxon Times*.

However, this Record that the King's Son had those Titles, is an Authority of much higher Nature than any Conjecture against it.

As to their Prince of *Cumberland*, let them shew one since *Malcolm*, who was King of *Cumberland* while another was King of *Scots*. But upon the Confessor's making *Malcolm* King of *Scotland*, *Cumberland* was plainly reunited to the Crown of *England*; that it might not be in danger of making a part of the Kingdom of *Scotland*.

Objt. 4. Another mighty Argument is, that there is no mention in this Homage of the *Northern* Counties, tho then Possessed by the *Scots*; which is said to be an Argument of its being a *Forgery*.

Ans. But I say this Charter is one strong Argument that no part of *England* but *Lodony*, which was agreed to be left under the Government of the *Scots*, was Possessed by them. Besides, the

Course

Course of History to that time, and the occasion of a King of *Scots* having *English* Honours afterwards, make it very evident that no part of *England* but *Lodeny*, was then in the hands of the *Scots*.

Another Objection is against the use of the *Object. 5.*
Word *Parliament* in the time of the *Confessor*, who had Resided in *France*.

But even Sir *H. Spelman*, who overlooked all *Answer.*
the Evidences which his vast Reading had offered, of the Antiquity of Parliaments, as a true Representative of the whole Nation; has furnished an Instance of the Word *Parliament* in the *Saxon times*; applied to an Assembly of all that were Interested in managing the Affairs of an Abby. *Vid Sir. H. Spelman's Gloss Tit. Parliam.*

But here comes the deadly stroke, that which *Object. 6.*
proves this Homage to be a *Forgery* beyond all *Controversie*, is the alledged Consent of *Margaret*, Queen of *Scotland*, and *Prince Edward* her Son.

Whereas he says, all our Historians that he had met with agree, that she was not Married till she fled with her Brother out of *England* after the *Conquest*.

I will own that several Ancient Historians, *Answer.*
speaking of *Edgar Athelin's* going into *Scotland*, mention his Sister's being Married to the King of the *Scots*, and some are positive that it was then; but others intimate nothing certain of the time of her Marrying, nor was it material to what they writ: and they who do name a time, speak of it in *Transitu*, by the bye.

But this cannot be of any weight to blast the Credit, not only of the Charter, but of *Ordericus Vitalis*, who ended his History in the time
of

of *King Stephen*, when he was an ancient Man, of great Integrity and Reputation, and had means of fully satisfying himself of the truth of so material a Passage, as that which I have cited out of him. Therefore notwithstanding the loud Negative of Moderns, I may affirm with *Ordericus*, and for ought yet appears, with a good Record on my side, that the *Confessor* gave *Margaret* to the King of *Scots*, with the Noble Dowry of *Lodeny*.

But we have not yet done with Objections. *Object. 7.* Another, which Mr. *Ridpath* had put before, as an Antidote against the Charter, is, that *Edward I.* in his Defence to *Pope Boniface*, made no mention of it to justify his Proceedings against the *Scots*.

Answer. It appears above, that he did urge what was much more material; that the King of *Scots* received his Crown of the Grant, or Investiture of the *Confessor*, which even Sir *T. C.* owns to carry *Homage* along with it as an inseparable incident.

Object. 8. But then he says, *R. I.* Restored to *W. I.* King of *Scotland*, all the Monuments of *Homage*, either performed, or which had been said to be performed: and asks whether 'tis reasonable to suppose the Government of *Scotland* would have been so silly as to have neglected Demanding such an Authentick Record: or, that the Government of *England* would have broken the Publick Faith to have detained it?

Answer. Let any one look on that Charter of *R. I.* And they may see by the Witnesses that it was a Private Act of the Kings, for the sake of a little Money, when he was intent upon the Holy War: and as it was of no Effect to Pre-

judice

judice
concer
Bef
so am
the C
puttin
no rea
" R
" nan
" Cha
" King
" ever
" or of
" conf
So
oblige
the K
intenc
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of the
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relate
" hav
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ject M
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" Ca
" for
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Char
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judice the Crown; the Publick Faith was not concerned in it.

Besides, the words of the King's Charter are so ambiguous, that all besides the restoring the Castles of *Roxborough* and *Berwic*, was but putting a Feather into the *Scotch* King's Cap, of no real significancy.

"*Richard* quits all Agreements and Covenants, which his Father had extorted by new Charters and Imprisonment: but so as the King of Scots perform entirely and fully, what ever *Malcolm* the King of Scot's Brother did, or of right was obliged to do, to *Richard's* Predecessors.

So that if the Kings of the Scots had been obliged to do Homage for their Kingdom to the Kings of England; that Obligation was not intended to be lessen'd, nor was it within the Intention of the Charter, that any Evidence of the former right should be given up.

This appears evidently by the Clause which relates to the Restitution of Charters "we have Restored unto him *Ligeantias* (which Mr. *Ridpath* renders *Allegiance*, but the Subject Matter there shows it to be Tyes, or Obligations,) "Homages, and Charters, which Our Lord and Father extorted from him by his Captivity; and if any other happen to be found or retain'd thro' forgetfulness, we Command that they shall be of no Effect.

'Tis much that he who Translated this Charter should not observe, that the Restitution is confin'd to such Obligations, Homages, and Charters, as *H. II.* had extorted; but all Evidences of what was due and Pay'd to the Predecessors of *R. I.* and *H. II.* were to remain.

If there were any other Charters of *Homage* even of the time of *H. 2.* besides such as were Executed while the King of *Scots* was a Prisoner; such Charters were not within the Intent of *R.* the 1st's Release.

And yet as it will appear, when we come to the Charter of the *Homage* done to *H. 2.* there were other Matters in it, from which the King of *Scots* might well be glad to have but the shew of a Discharge.

I am almost weary of trifling so long in Answering what has nothing in it.

Object. 9.

Another Objection is, that it is not to be thought *H. 8.* would have omitted this in his Declaration of War against *James* the 5th. wherein be amass'd all that could be said for the same.

Ans.

That he urg'd all that could be said, is only *Mr. Ridpath's* Opinion. However a Declaration of War, seldom descends to all particular Proofs; for that were to make an History instead of a Declaration.

Object. 10.

Mr. Ridpath having as he supposes, evidently detected this of *Forgery*, concludes 'twas Forg'd in *Queen Mary's* Reign; because when fresh enquiry was made into the Pretensions of *England* to this *Homage*, in the time of *E. VI.* there's no mention of this Record, as appears, says he, by *Dr. Burnet's* History of the *Reformation*.

Ans.

This Objection argues want of that Sincerity which might have been expected; since having observ'd what is in the Appendix to the 2^d. part of the History of the *Reformation*, he could not but take notice, that all the Evidences that were laid before *E. 6.* were not Transcribed, and put in the Appendix to the *Bishop of Salisbury's* admirable History, or pretended to be found by him. But

it appears from the *Appendix* that *Tunstal B. of Durham*, being desir'd to give an account of what Evidences he had found in his *Archives*, refers to some, not particularly mention'd by him, of which he had sent Copies : And takes notice of another Charter owning *Homage* for the Kingdom, under the Seal of a King of Scotland, which as I shall shew is a full Confirmation of what Mr. *Ridpath* so strenuously denies, and might have convinced him, that there was no occasion, to Counterfeik such a Charter as *Malcolm's* : Besides, the original Charter it self, and Exemplification with the *Lord Langvill*, carry with them Demonstration of much greater Antiquity than *Queen Mary's Reign* : and yet that is as probable as any time, which can be assign'd for the suppos'd Forgery.

For to what end should a Single Evidence be Forg'd, when, as appears, all our Ancient Histories, and our Laws, manifest not only the ground of the Superiority of the Crown of England, but it has from Age to Age been acknowledg'd? And 'tis certain after so full Submission of Prince and People, as was in the time of *E. 1st.* besides what will appear in the Reigns of *E. 3.* and *H. 6.* *Vid. Inf.* there was no occasion for any Succeeding Monarch, or Officious Subject, to forge a single Evidence of *Homage* for the Kingdom of Scotland.

This may seem more than enough to answer all the Objections against the validity of this Memorable Record ; which yet will be farther supported by observing how the right to *Homage*, for the Kingdom of Scotland has been maintained by our Monarchs of the *Norman Race*, and acknowledg'd by the *Scots*, with the continu-

ance of the Dependency of the Crown of Scotland, or rather, annexation to the Crown of England.

CHAP. XXII.

Of the Homage done by Malcolm to W. I. and his Laws and Charters, manifesting the Superiority of the Crown of England: And demonstration that the Homage was for the Kingdom of Scotland, not for Northumberland, Cumberland, or Westmorland, or any Lands in England, but Lodeney.

When I come to consider the Nature of the Succession to the Imperial Crown of this Realm, I shall make it evident that W. I. was duly Invested with all its Rights; in the mean while I shall shew, that he did assert his Right over the Kingdom of Scotland, and that it was fully, and in form acknowledged.

S. T. C.
p 271.

Sir T. C. says, Matthew Paris mentions a double Surrender made by Malcolm to the Conqueror, as he styles W. I. but will have it that others do only take notice of one; which is but one of his usual mistakes: For there are very good ancient Authorities of two, if not three Surrenders.

The first was in the 2d, of King W's Reign, immediately after York had Surrendered to him.

Ordericus Vitalis speaking of that time has this Passage,

Tunc

T
tiffim
rum
am
obfide
quoque
gratit
Malc
eis n
O a
in Se
colth
Angl
O va
in cor
cere p
tamen
evit, &
nuntio
mist p
fidele o
Sic ut
populo
placuit
prapost
gens li
fit, ori
tem di
nis inq
stiane
quam
fudius.
loves E
by Ne
on the
Arms.

Tunc *Archibellus* potentissimus *Nordanumbro-*
rum cum *Rege* concordiam fecit, ei^{us}que fil. suum obsidem tradidit. *Præsul* quoque *Dunelmi Regis* in gratiam accessit & pro *Malcolmo Rege* pacis mediator intervenit, & acceptas *Conditiones* in *Scotiam* detulit. *Malcolmus* autem licet ab *Anglis* requisitus fuerit & validam expeditionem in eorum auxilium facere paraverat, audita tamen legatione pacis quievit, & cum *Præsule Dun-*
nuntios suos orante remisit per quos *Gulielmo* fidele obsequium iuravit. Sic utiliter sibi consuluit populoque suo multum placuit, quod pacem bello præposuit. Non *Scotica* gens licet in prælio aspera sit, otium tamen & quietem diligit, nallet a vicinis inquietari regnis, *Christianæ Religionis* plus quam armorum intenta studiis.

loves Ease and Quiet; and would not be disturb'd by Neighbour Kingdoms, being more intent upon the Study of the Christian Religion than of Arms.

Then *Archibill*, the most Powerful of those on the North of *Humber* made an Agreement with the King, and delivered his Son an Hostage. Also the Bishop of *Durham* obtained the King's Grace, and interposed as Mediator of Peace for *Malcolm* King of *Scots*, and carried into *Scotland* the Terms which were approved of. *Malcolm*, tho he were entreated by the *English*, and prepar'd to make a strong Expedition in Aid of them; yet an Offer of Peace being heard of, was quiet, and joyfully sent his Messengers with the Bishop of *Durham*, by whom he Swore Faithful Obedience. So he consulted his own Profit, and much pleased his People, because he preferred Peace before War. For the *Scotch Nation*, tho it be rough in Battle, yet

The Faithful Obedience, or Allegiance then Sworn by *Præny*, as it was pleasing to the People of Scotland, was evidently with their Consent; yet it appears by the Register of *Abington*, that the King of Scots did not long keep to his Solemn Engagement: mentioning a time of which I have no Note, it says,

Bib. Cot. Rex Scotiæ Malcol-
 Claud. B.6. mus Subjectionem Regi
 Regist. Ab. W. eo tempore detre-
*habat. Quare coacto in
 unum exercitu Rex fil.
 suum Robertum ma-
 jorem Natu Scotiam
 sua vice transmisit, cum
 quo & plures, &c. in Ang.
 Primates, quorum unus
 Abbas Adelelmus, &c.*

At that time Mal-
 colm, King of Scotland
 withdrew Subjection
 from King *Wsl.* Where-
 fore his Army being
 drawn together, the
 King sent his Eldest
 Son Robert in his stead:
 with whom also went
 several of the great
 Men of the Kingdom
 of England, of whom

one was Abbot *Adelelm*.

He was Abbot of *Abington* at that time, and as I remember, was Attended by twelve Knights, who held of him by *Military Tenure*.

The Abbot having been there himself, his Service to the Crown by himself, and his Tenants obliged to such Service, as the performances were Recorded in the Earl-Marshall's Roll, could not possibly be any Fiction: because the Register would not be conclusive against the Crown, but might be falsified by the Marshall's Roll.

As therefore we may be certain that the Abbot was then with Robert in Scotland, we cannot reasonably doubt of the Fact, as Enter'd in the Register, which adds,

Verum

*Verum Rex ille Lo-
donis occurrenti cum fu-
it, pacisci potius quam
preliari dedit. Perinde
ut Regno Angliæ Prin-
cipatus Scotiæ Subactus
foret, obsides tribuit.*

But that King with
his People, meeting in
the Lodensis, chose ra-
ther to enter into an
Agreement than to
Fight. Therefore gave
Hostages that the Prin-
cipality of Scotland
should be Subject to the Kingdom of England.

The Homage could not be performed to any
Body but the Person of the Lord; therefore Ho-
stages were given for the performing that, in
sign of the Subjection of the Principality of Scot-
land to the Kingdom of England.

That this was afterwards done in full Form,
there are many Authorities.

* Bib. Cot.
Vatellus
A. 20.
Hunc lib.

*dedit frater Radulphus de Durham Priori Deo & Eccles. St. Mar.
& St. Osmi de Tinmouth.*

An * Ancient Manuscript belonging to the
Priory of Tinmouth has these Words,

*Rex Willielmus cum
navali grandi & eque-
stri exercitu, Scotiam est
profectus, omnia cede &
incendio devastando. Cui
Rex Scotor. Malcol-
mus in loco qui dicitur
Abernitbi occurrit & ho-
mo suus devenit.*

King William with a
great Fleet and Army
went into Scotland, wa-
sting all things with
Sword and Fire. To
whom Malcolm, King
of the Scots came in a
place called Abernitbi,
and became his Man.

The Saxon Chronicle is expresse, that upon Chron.
King William's going into Scotland, King Mal-
colm Agreed with him, gave him Hostages, and
his Man was; which the Translator has Ren-
dred Servant, but was evidently Homager.

Q 3

Their

Chron. de
Mailros.

Their own Chronicle agrees in the very Year, and says, King *Malcolm* meeting him in a place called *Abernithi*, *homo suus devenit*, became his Man, or did him *Homage*. Ingulph of the very time speaking of King *William's* going in *Northumbria*, into the Country on the North of *Humber*, Says,

*Pertransiens etiam tunc
& ultra progrediens in-
clitus Rex Willielmus in
Scotiam, eam sibi Sub-
jecit, & Malcolmum
Regem ejus, sibi homa-
gium facere & fidelitatem
jurare Abernithi coegit*

Also then the Re-
nowned King *William*
going through, and
advancing further in-
to *Scotland*, Subjected it
to him, and compelled
Malcolm its King to do
him *Homage*, and Swear
Fealty at *Abernithi*.

Vid. Brui-
ni Hist.
Scotica.
Nomencla-
turam. 51

This place the *Scots* now called *Abernethy*, and is the East Point of *Strabern* near *Dise*, and as they say, in the *Picts* time was the Royal Seat of their Kingdom, and Metropolitan of their Church.

Sr. T. C.
p. 270.

In a matter so plain, and of times, the History of which admits of no Controversie, one would think *St. T. C.* should fall to Evasions and Descanting upon words, rather than to downwright Flattery. He tells us, "The terms
" were harder upon the Conqueror than the
" King of *Scots*, and that it may easily be in-
" ferred that the *Scots* were Superiour in Arms,
" for the Conqueror demanding three Things.
" 1. That the *English* Exiles should be given
" up. 2. That the King of *Scots* should receive
" none. 3. That he should do *Homage*, as
" usual for *Cumberland*, *Northumberland*, and
" *Westmorland*, *Malcolm* agreed only to the last.

with

With this he supposes, *William* the more readily took up, because, as he would have it thought, the Gallant *Siward*, Earl of *Northumberland* had joyned his Nephew *Malcolm*.

When 'tis certain that Earl *Siward* died in the Year 1055. in some Accounts, 1056. in others, the very Year that he, by Order of the Confessor gave Investiture of the Crown of Scotland to his Homager *Malcolm*. Chron. Sax.

Indeed there was another *Siward*, whose Surname was *Bearn*, that fled into Scotland with *Edgar Atheling*.

But as Authorities are express, That *W. I.* Subjected the Kingdom of Scotland to him, 'tis demonstration that *Malcolm* did Homage for the Kingdom of Scotland.

Besides, the fiction, as it is all of a piece, labours with an Absurdity, as if King *William* demanded Homage for Countries, the Government of which he adjudged, or disposed of to others, being all but *Cumberland*, which was soon restored to the Crown of *England*, in his quiet possession; except that sometimes they were Infested with Depredations from the *Scotts*.

Sir *T. C.* agrees that *Matthew Paris* says, *Malcolm* St. *T. C.* became the Conqueror's Liege-man: But then, as P. 271. he either did not, or would not seem to understand the Difference between feudal and Liege Homage, nor between Homage which was done, and Fealty sworn; he will have it that *Malcolm's* becoming *W's* Liege-man, imports no more, than that he did him Homage.

Whereas Swearing to him as a Liege-man was an acknowledging him his King, and Superior over his Kingdom.

If any question could be upon that later Authority, 'tis very evident from the *Saxon Chronicle*, and *Ingulpb*, and even their own Register of *Mailros*, which shews that *Malcolm* became *William's* man, without relation to any particular Lands.

That *Malcolm* did Homage without regard to any Country in *England*, and made no pretence to any at that time; but *Lodowy*, he himself afterwards own'd to *Wm's* Son *Robert*, when he came to perswade *Malcolm* to do Homage to his Brother *William* the 2^d.

Ord. Viril.
fol. 701.
An. 1092.

Then he confess'd that when the *Confessor* gave him *Margaret* to Wife, he also gave him *Lodowy*.

After that he says,

*Guilelmus Rex quod
antecessor ejus mihi dede-
rat concessit, & me tibi
primogenito suo commen-
davit.*

King *W.* confirm'd
what his Ancestor had
given me, and com-
mended me to you his
eldest Son.

Any Man who observes the use of *commen-
dare* & *commendatio*, in *Domesday Book*, must needs
think that according to this, *Malcolm*, either did
Homage to King *W.* and his Son *Robert* by
name, or, as is more likely, to *W.* and his
Heirs. Accordingly *Malcolm* went upon the
mistake as if *William* was not truly the Heir of
the Crown, tho' *Robert* was the first in the Line.
This shews that *E. I.* and his Council had good
warrant to say,

Rot. Claus.
29. E. 1.
sup.

William call'd the *Bastard*, King of *England*,
the said *Edward's* Kinsman, took Homage from
Malcolm as from his Man Subject to him.

The ground and right of this, as it was evi-
dent by the *Confessor's* Laws, so it is by the Laws
of

of Wm. I. those I mean of which there never was any question, the 51st. of the Print, but rather the first is this,

Statuimus imprimis super Omnia unum Deum, per totum Regnum Nostrum venerari, unam fidem Christi semper inviolatam Custodiri, pacem & securitatem & Concordiam, Judicium, & Justiciam, inter Anglos & Normannos, & Francos & Britones Wallie & Cornubie, Pictos & Scottos Albanie, similiter inter Francos, & Insularios Provinciarum & patrias quae pertinent ad Coronam & Dignitatem defensionem & observantiam, & Honorem Regni Nostri, & inter Omnes nobis Subditos per Universam Admonitionem Regni Britanniae, firmiter & inviolabiliter observari, ita quod nullus alius foris faciat super forisfacturam nostram plenam.

We enact in the first place above all things, that one God be worshipp'd thro' Our Realm, one Faith be kept inviolable, Peace and Security and Concord, Judgment and Justice, between the English and Normans, French and Britons of Wales and Cornwall, the Picts and Scots of Albany; in like manner between the French and Islanders of the Provinces and the Countries, which be long to the Crown and Dignity, the Defence and Observance and Honour of our Kingdom, and between all Our Subjects throughout the whole Monarchy of the Kingdom of Britan, to be firmly and inviolably observ'd. So that no Man forfeit to any other upon our full forfeiture.

Lamb.
Archaion
f. 170. &c.
Lib. Rub.
in Scac.
It might
easily be
shown that
the French
Laws ad-
ded to In-
gulf, were
not those
which In-
gulf refer-
red to.

Nothing can be more plain than that,

1. As in the time of the Confessor, so in Wm. there was one entire Monarchy, which was the Kingdom of Britain.

2. This

2. This *Monarchy* was not confined within the *Picts* Wall, or any part adjoining to the *Picts* or *Scots*; but all the *Picts* and *Scots*, even in *Albany*, which is agreed to be all *Scotland*, were so far within the Government of the *English* Monarch, that he was not only to keep the Peace, but to do Justice among them.

3. The full Forfeitures of the Subjects, for Treason especially, within *Scotland*, were not to their immediate Prince, but to the head of the *Monarchy*.

Bib. Cor.
Claud.
Df. 12.

Suitably to this an Ancient Manuscript of the number of *Provinces*, *Countries*, and *Islands*, which of Right belong, and without doubt appertain to the Crown and Dignity of the Kingdom of *Britain*, among them places *Albania quæ modo Albany*, which is now *Scotia vocatur.* called *Scotland*.

The Author of the *Saxon Chronicle* of the time of *W. I.* who professes that he had seen him, says

Scotland he him under He brought *Scotland*
thæde. under him.

Chron. Sax.
de A. 1086
Monast.
Vol. 1 f. 52.

And according to this, *W. I.* in Imitation of the *Stile* which his Ancestors used, as often as they thought fit to express what was contained in being King of the *English*, writes himself, By God's Providence, King of the *English*, and the rest of the Nations round about.

That in the time of W. I. the Scots had no part of England but Lodeney. The Objection from the large omissions out of the Great Survey removed.

I would gladly know what part of England besides *Lodeney*, was possessed by the *Scots*, when their King did Homage to *W. I.* Indeed before that they had some Possession of *Cumberland*, but as the circumstances above evince, that no Man could have it as King of the *Scots*; they cannot shew that a *Scot* was permitted to enjoy that Government as of Right, for any considerable time after the King of the *Cumbrians* had the Kingdom of *Scotland*.

Indeed Authors who could not but know the State of those Parts, admit that in the 4th. of *W. I.* the *Scots* were Possessed of the Government or Power of *Cumberland*, (a) but then they say, it was by Force, without Right, and that Force *Co/patrie*, then Earl of the *Northanbimbrians*, Removed, and Restored the Possession to the Crown of *England*.

While there were Kings of the *Cumbers*, or rather, of the *streaked Welsh*, the Kings either of the *Cumbers*, or those *Welsh*, were under the immediate Government of the *Northanbimbrian* Kings. Accordingly *Egfrid*, one of those Kings gave (b) *Lugabalia*, now *Carlisle*, the *Cumbrian* Bound on that side of the *Scots*, with fifteen Miles round about it, to the Church of *Durham*.

As no *Barony* can be shewn of *H. II.* Reign, which was not a *Barony* before *W. I.* if a *Barony*

S. Dun. f. 100. De A. 1070. Bib. Cot. Glouc. D. 7. Large Angl. Hist. per Canon. de Lanercost in Com. Northumbria. Erat eo tempore Cumberland sub Regis Malcolmus Do-
minio, non jure possessa sed violento subacta.
(b) Mon. 1. Vol 7. 29 An. 658.

rony can be shewn in Cumberland of H. II. time, which could be no other wise than as holding of the Crown of England, Cumberland whatever Kings it might have had, must needs be thought part of England.

Lib. Rub. in
Sent.

But Thomas Muleton of Egremont, in that County, then acknowledged to hold one Knights Fee by Barony. This was the Barony of Egremont, which afterwards came to the Pivots; for I find a Recognizance of the time of H. VI. wherein Sir Thomas Pivory Stiles himself Dominus Egremont.

Rot. claus.
de 36 H.
6 d.

As to the Government of the County of Cumberland, W. I. having Removed Cospatic, who had it within his Northanbymbrian Earldom, gave it to Ralph de Meschines.

Camb. Brit.
f. 648.

He had with this the Barony of Westmerland, which appears to have been an hereditary Earldom under the Northanbymbrian King, and after under Earls while that Earldom was entire; it was held at five Knights Fees, or by the Service of five Knights; for in the Red Book in the Exchequer, of the time of H. II. I find,

Lib. Rub. 6.
in Scac.

Roger de Cliff jun. who Married the Eldest Daughter, and Heir of Robert de Veteris Pontis, or Oldbridge, acknowledged to hold two Knights Fees and a half, for the Moity of the Barony of Westmerland.

Mon. Vol. 1.
f. 839.

In an Account in the Monasticon of the ancient Lords of the Manors of Elreton and Tadewyks 'tis said.

Ante temp.
W. I. Ba-
stard, &c.

" Before the time of William the Bastard's coming into England, there was a certain entire Lord of the Manors of Elreton and Tadewyks, who was called Simon the Son of Thorn. In whose time William Bastard the

Con-

" Conqueror came; which *Simon* had three Daugh-
 " ters and Heirs, *Mary, Matild, and Cassandra*
 " Which *Mary* was given and Married by the
 " Conqueror to one *Humfry de Boffingburne*, the Earl
 " of *Westmerlands*, Tenant by Knights Service.
 " And the said *Humfry* had with the said
 " *Mary* in Fee, all the Demefn, or rather,
 " Lordship of *Elrston*, with all Wards, Re-
 " lefs, Escheats, &c.

Militi
Comitis de
Westmer-
landia, in
Hereditate
totum Do-
minium,
Vid. Spel-
man's Glif.

Here though *W. I.* is called Conqueror, 'tis
 plainly in no other Sense than as he acquired
 the Possession of the Crown, taken from him
 by Usurpation; but the *Saxon* Proprietors re-
 tained the Ancient Right and the Lord of that
 Manor, in which there was no alteration of
 Property or Tenure, had *Wardship, Relief* and
Escheat, from of Old.

This by a Marriage came into the Family of
 a Knight, holding of the Earl of *Westmerland*:
 But I suppose no Man will pretend, that the
 then Earl of *Westmerland* was the King of *Scot-*
land, Nor can the *Scots* shew more for the
 County of *Northumberland*.

In that, as in *Cumberland*, and *Westmerland*, there
 were *Baronies* holding of the Crown of *England*;
 particularly, I find the *Barony of Morwicks*, of
 which the Wives of *John de Bolemere*, of *John*
de Rosel, and *Roger de Lomley*, were Heirs. And
Robert de Somervil held the *Barony of Merley*, in
 right of his Wife, for 2 *Knights Fees*.

Lib. Rub.
in Scac.

I could shew several Tenants in Chief or *Be-*
rons of that County; but must not omit *So-*
mers, VV, de Mobun, and *Richard de Monteacuto*,
 or *Montagu*.

Lib. in
Scs.

The

(a) Mon.
1 Vol.
f. 39.
An. 950.

The (a) whole *Northanbymbrian Kingdom* came to the Crown, in *Edred's* time, he gave it to *Earl Osluf*, afterwards *King Edgar* joyn'd *Oslaf* with him; this *Siward* held entire while he Liv'd in the *Confessor's* time.

(b) In-
gulph.
f. 510.
An. 1056.

(b) After *Siward's* Death, the *Confessor* gave the Earldom of *York* to *Tofti*, Brother to *Harold*.

(c) Wen-
dover, M's.
in Bib.
Cot.

(c) *Wendover*, with whom *Matthew Paris* generally agrees, makes *Tofti* Earl of the whole *Northanbymbrian Kingdom*.

(d) Cart.
Antiq. in
Turri
Lond.

That in part at least he was immediate Successor to (d) *Siward*, may appear by a Charter of *William I.* Granting *Hemingworth* to the Church of *Durham*, with all the Royalties; with which the King himself, and before him *Siward* and *Tofti* had enjoy'd it. Whatever was *Tofti's* share, he was driven out by the People, who chose *Earl Morcar* in his room to part at least of the *Northanbymbrian Earldom*; the other part was certainly enjoy'd by *Morcar's* Brother *Edwin*, upon whose forfeiture *William I.* granted away his Lands in *Yorkshire*, with all *Knights Fees* held of him.

The two Brothers having forfeited, the entire *Northanbymbrian Earldom* was not so much given the Saxon Earl *Waltheof*, as adjudg'd to him; it being as the Historian shews, his right, both by Father and Mother.

Mon. Vol.
f. 42.

He in the 4th of *William 1st.* Stiled himself Earl of all *Northumbria*, which was manifestly the old *Northanbymbrian Kingdom*: And therefore whatever Government any body else had in those parts; 'twas all under him, till the 11th. of *King William's* Reign, when that great Earl was Attainted for High Treason, by the
Judg-

Judgment of his Peers in full Parliament ; where his interest was so great, that it was a Year before the King could get Judgment.

After his Death the *Northanbymbrian* Earldom was plainly canton'd out, but the Country was under *English* Earls before, in, and after the time of *VV. I.*

Besides the constant Succession of the *English* Earls, that *Northumberland*, with the Country thereabouts, was in the hands of the *English*, in the 13th. of *VV. I.* there is a farther Proof ; for the *Saxon Chronicle* of that Year says, *Malcolm* King of *Scotland* came into *England*, the Land of the *English*, and *Gebergode* wasted *Northymbrialand*, the Land of the *Northanbymbrians*, *Oth hit come to Tine, till it come to Tine.*

Cron. Sax.
An. 1079.

But it shews that he immediately return'd, without leaving any Force there.

And immediately before the Survey, King *W.* having been threatned with an Invasion from *Denmarc*, brought over a great Army from abroad, which he dispos'd in Garrisons, wherever there was occasion ; whereby he secured the Peace of his whole *Monarchy*.

An. 1083.

(a) I find by an Historian of those parts, that *Hugh* the Son of *Balderic* was Sherif of *Northumberland*, in the 7th. of *VV. I.* and that appears to have been an (b) *Hereditary Sherifwic* : This *Hugh Fitz. Baldric* continued his property to the time of the Survey, when he was one of that King's Barons : for in the great Survey I find *Terra Hugonis fil. Baldrici*, the Land of *Hugh* the Son of *Baldric*, which is the Common designation of tenure in Chief ; not but that some-

(a) *Bib.*
Cot. Claud.
D. 7.
Hist. per
Canon de
Lanerc. 8.
An 1703.
fil. Balde-
rici.

(b) *Vice-*
comes N. r-
thumbrie.
Vid. W.

A's Answ. to Chief. J. Herbert, the general Mistake of the Year
Book of H. 7. A's 40, In relation to the Sherif of N.

(c) *G. D. f.*

times

Berk.
f. 60 b.

times the Survey shews that tho one Man is entered as Tenant in Chief, the Right is in another: Thus to do Right to the Saxon Family of Spencer under Terra Roberti de Oligi. I find,

*Isdem R. tenet unam
Hidam quam Azor Dis-
pensator T. R. tenuit.
Hanc terram tenet isdem
Azor de Roberto, sed
Homines de Hund. testi-
ficantur cum de Rege di-
bere tenere, quia Rex W.
apud Windesores red-
didit, & breve suum inde
dedit. Vero Rob. tenet mi-
nus. iuste, nemo enim vi-
dit breve Regis, vel ex
parte Regis hominum qui
cum inde saisisset.*

The said Rob. Holds one Hide, which Azor King Edward's Dispenser Hold. This Land the same Azor Holds of Rob. but the Men of the Hundred Witness, that he ought to Hold of, the King, because the King restored it to him at Wind/or, and gave him His Writ thereupon. But Rob. holds it unjustly, for no body saw the King's Writ, or any Man from the King, who gave him Seizin thereof.

Men who have a very imperfect Notion of Domesday Book, thinking they are warranted by the Historians of the times, to say that it contains an account of all the Lands within the Kingdom of England, as they were Held in, or about the 20th of W. 1. and being told that most of the Parts here in question, are left out of the Survey, conclude it must have been, because they were Possessed by the Scots.

An. 1085. The Saxon Chronicle, indeed, says, King W. held a great Council, and had grave Discourses with his Witan, wise men of this Land, how it was Geset, Improv'd, or cultivated, and mid whilcom Mannon, with what Sort of Men up-

upon this the said he sent Officers into every County, to cause enquiry how many Hundred Hides were in every County, and what Land and Cattle the King had in the County, and what Yearly Rent he ought to Receive out of it.

San Chron.
p. 193.

'Tis said afterwards, there was not one Hide of Land in the Kingdom of England, whose Possessor he did not know.

This admits of a very short Answer: That if it were true in a literal Sense, all the returns which were made from several parts of the Kingdom were never entr'd in *Domesday-book*, thro' carelessness, or some accident; for 'tis demonstrable that in the *Survey* now to be seen, great part of what all agree to have ever been within the Kingdom of England was omitted, and a Reason given for it, which may qualify the meaning of what the *Saxon Chronicle*, and the generality of Historians have, following that.

The Reason why 7 Hundreds of 12 G.D.f. 172.
are wholly omitted out of the great Survey is Wire-
thus given in the Survey it self. cestrescire.

*In ipso Comitatu sunt
12 Hund. horum 7 ira
sunt quieti sicut Scira di-
cit, quod Vicecomes Nihil
habet in eis, ideo sicut dicit
in firma multum perdit*

In that County there
are 12 Hundreds, 7 of
these are so quiet, or
free, as the Shire says,
that the Sberif has no-
thing in them, and
therefore as he says,
he loses much in his
Farm.

Further it may be observ'd that the Historians
say, the Survey was in imitation of the old Roll
of Winchester, made by King Alfred, and this
R gives

Ingulph.
f 8.

Talem ro.

tulum &

multum si-

mitem edi-

derat quon-

dam R.

Alfredus,

&c.

gives a plain account why *Alfred's Survey* could not be carried on to the time of *W. I.* in relation to most of what was within the *Northanhymbric* Kingdom; that being in King *Alfred's* time in the Possession of the *Danes*, after whose times it's *Kings* and *Earls* Successively owed no other Service to the Crown of *England*, but *Homage*, with it's Incidents: And this they perform'd with their Men enfeoffed under them. Besides where *Feuds* are Entr'd in *Domesday-book*, 'tis evident to any Man, upon the most cursory View, that our Historians are mistaken in supposing that all the *Hides* which any Man Held, are mention'd.

Often 'tis said, Land was never *Hidated*, and the *Hundred* can give no account how many *Hides* it contain'd; which is often shewn to be by reason of the Military Service, which the *King's* or great Lord's *Homager* was oblig'd to perform.

This shews the judicious Antiquary Mr. *Camden* to have been in the right, in his Conjecture, why those Parts were left out of *Domesday-book*, *Quia pensitationibus liberæ*, because free from Payments or common prestations to the Crown.

C H A P. XXIII.

Of *Malcom's Treaty* with *Rob. W. II's Elder Brother*; acknowledging that he had done *Homage* before, without regard to any Lands in *England*, but *Lodeney*, Part of the *Scotch Story* and an unexceptionable Charter of one of *Malcolm's Successors*, acknowledging, and demonstrating the Rights of *Homage* for the Kingdom of *Scotland*.

THO' I could not but touch above upon the Transaction at *W. II's* demand of *Homage*, as it drew on Confessions of what pass'd in the

two former Reigns, I perswade my self a Translation of the account at large, will not be thought a tedious Repetition.

“ At that time, says *Ordericus Vitalis*, *Mal-*
 “ *colm* King of the *Scots* Rebell'd against the
 “ King of the *English*, and deny'd the Service
 “ due to him. Moreover *King W.* after, as *Ord. Vital*
 “ we related above, he had made Peace in f. 7co. D;
 “ *Normandy* with his Brother *Robert*, and A. 1093.
 “ had carry'd him against Faithless
 “ Traytors, who had Conspir'd against
 “ their King; gather'd together an Army of
 “ all *England*, and March'd with it as far as
 “ the great River, which in *Scotch* is call'd
 “ *Watra*: But because the Passage was diffi-
 “ cult he stay'd on the Bank. But the King of
 “ the *Scots* sent to him by Messengers, Thus,
 “ To you, *King William*! I owe nothing but
 “ Battle, if provoked by you with Injuries: But if
 “ I see *Robert*, *King William's* eldest Son, I am
 “ ready to perform to him what I owe.

“ These things being heard, the King, by
 “ the advice of his Wise-men, sent Duke *Robert*
 “ with a few Souldiers cross the Water. And
 “ the King of the *Scots* receiv'd him kindly,
 “ and in a friendly manner kept him with him
 “ three days: Then he carry'd him to an high
 “ Mountain, and from thence shew'd him a
 “ very great Army in a certain Plain. From
 “ thence he led him between two Mountains
 “ on another side, and shew'd him a great Ar-
 “ my in another Field.

R. 2

“ Be-

" Being, says he, thus environed with the
 " Forces of *Scotland*, I am ready to receive
 " your Brother, if he will venture to come over
 " the Water to me. I wish he would set upon
 " us, and try the sharpness of our Darts.

(a) Lodo- " I confess that King *Edward*, while he gave
 nensem " his Niece *Margaret* to Wife, (a) bestowed on
 Comitatum " me the Country of *Lodeny*.

Donavit. " Afterwards King *W.* (b) yeilded, or con-
 (b) Conces- " firm'd what his Ancestor had given me, and
 fit. " (c) commended, or assign'd me *Homager* to you
 (c) Me tibi " his eldest Son.

commen- " Therefore I will confirm to you what
 davit. " I promis'd, but I promis'd and owe nothing
 " to your Brother. No Man, as *Christ* says, can
 " serve two Masters. *Robert* answer'd, 'tis so as
 " you say, but things are alter'd, and by my
 " own agreement, Matters which had been
 " appointed have lost their former Force.

" Therefore now, O Renown'd King! Take
 " my Advice, and come with me to my
 " Brother; you will find with him Sweetness
 " and affluence of good, because he is nearer and
 " more powerful, and has greater plenty of
 " Riches.

" These things, therefore, being promis'd,
 " the King gave credit to him, and the Con-
 " ference being over, he was reconcil'd to the
 " King.

" Then they dismiss'd their Forces, and went
 " together into England.

Some of our Historians tell us, that then our
 King carry'd it very haughtily to the King
 of the *Scots*, and would not see him, but di-
 rected that he should do his *Homage* where-ever

our King should think fit to hold his Court ; but that the *King of Scots* insisted on it as the *ancient Custom* , that it ought to be done on the *Confines* of both Kingdoms. *Orderic*, who is so particular as to the main Matter, passes it over whether *Malcom* actually did *Homage* to *W. II.* or no ; and mentions only his going into *England* with *King W.* and being kill'd in his return by the *Earl of Northumberland*.

But the *Saxon Chronicle*, who could not but know the Truth of what he Writ, tho' he in Substance confirms what *Orderic* mentions of the Treaty manag'd by *Robert*, shews that *Orderic* had not observ'd the distinction of times.

The *Saxon Chronicle* shews that the Conference was in year 1091, which makes no considerable difference. But then it is positive that *Edgar Atheling* joyn'd with *Robert* in perswading the *King of Scots* to comply ; and *Edgar Atheling*, as appears above, was Witness to *Malcolm's Charter* in the *Confessor's* time. An. 10, 1.

The *Saxon Chronicle* goes further, and says, they made an agreement between the two Kings, that *King Malcolm* should come to our King, and his man *weartb* should be his man, that is, do him *Homage*. And pay him all the Obedience which he paid his Father.

And that *mid a the gefortnode*, he confirm'd it with his Oath.

Here was *Lige Homage*, or *Allegiance* actually perform'd.

This being done without regard to any Lands in *England*, the *Chronicle* adds,

And *King W.* promis'd him whatever Land, or thing he Possessed under his Father.

At that time the King of the Scots return'd Home well satisfy'd.

An. 1092.

The next Year King William went to Carlisle and Rebuilt, or rather Restor'd that City to 'its ancient State; Built a Castle there, and remov'd Dolfin, who was the Prefect or Governour. This being in the Confiner of Cumberland, bordering upon the Scots, makes it Evident that Cumberland was then in the Hands of the English.

An. 1093.

In the following Year, the King of the Scots sent to King W. desiring him to stand to the Terms upon which they had agreed.

But King W. citing him to his Court at Gloucester, sent him Hostages for his safe return; and afterwards Edgar Atheling, and the Hostages conducted the King of Scots with great Honour to Gloucester, where King W. not Vouchsafing to speak to him, he went Home in discontent, and returning enter'd Northumberland with an Army, which prov'd fatal to him.

Then the Scots chose Dufnal, Malcolm's Brother.

But Dunecan, the Son, who had been kept an Hostage ever since Malcolm's doing Homage to William I. apply'd himself to W. the II. Swore Allegiance to him, and with his leave got together a Body of English and French, by whose Assistance he took the Kingdom from Dufnal, and tho' he was in Possession of the Throne could not keep it quietly, till he promis'd to bring no more English and French among them.

An. 1094.

The next Year the Scots kill'd Dunecan, as might seem in Sir T. C's sense, their King by

the Laws of God, Nature and Nations, and set up *Dusnal* again.

Their Divisions seem to have given quiet to the parts of *England* in their Neighbour-hood, and therefore *Robert E.* of the *Northanbymbrians*, thought himself in a Condition to withdraw his *Allegiance* from his Prince : For he refus'd to attend the King's Court, unless he, like the King of *Scots*, had Hostages for his safe return.

Which occasion'd Action in those parts, where the Earl was taken Prisoner.

Then the King issued his Precept, requiring all who held Lands of him, to attend at his *Christmas Court*, if they would have the Benefit of Peace, or the King's Protection.

Cron.
Saxon.

Dusnal, the King of the *Scots*, as he was truly the Peoples King, being prefer'd before *Malcolm's* Sons, thought his Dependance was only upon the *Scotch* Nation, and slighting the Protection, in which he might have been included, gave no attendance at the King's Court. But neither He nor his People got any thing by that ; for *Edgar Atheling* who had a regard to the Memory of his Sister *Margaret*, took that opportunity to obtain an Army from King *W.* to Restore the Possession of the *Scotch* Throne to his Sister's Son by *Malcolm*. Therefore, as the *Saxon Chronicle* has it; about *Michaelmas*, *Edgar Atheling*, the King helping him, went with an Army into *Scotland*, and Subdued that Land, by a sharp Fight, and drove out *Dusnal*, and Constituted his Cousin *Edgar*, who was the Son of King *Malcolm* and Queen *Margaret*, King there.

An. 1097.

On that's *Cingis Wilhelmus Helden*, to hold of King *William*.

I shall now produce a Charter of that King Edgar's owning the Homage for the Kingdom of Scotland, and confirming the Charter of Malcolm and the Substance of the Account given by Ordericus Vitalis.

M. i Vol.
F. 45.

In nomine Patris, & Filii, & Spiritus Sancti, Amen. Notum sit omnibus Christi Fidelibus presentibus & futuris, quod ego Edgarus fil. Malcolmi, Regis Scotor. totam terram de Lodenais, & Regnum Scotie, dono Domini mei W. Anglorum Regis possidens Consilio præd. Domini mei Regis W. & fidelium, meorum pro animabus mei & Matris meæ, nec non & Fratrum meor. Duncalini & Edward, & pro Salute Corporis mei & Animæ meæ, & pro omnibus Antecess. meis Do. Deo Omnipotenti, et Eccles. Dunelm, & Sancto Cuthberto, glorioso Pontifici, & W. Ep. et Monachis in ead. Eccles. Deo servientibus, & imperpet. servituris, Mansionem de Berwic, & cum ista Mansionem hæc

In the Name of the Father, Son, and the Holy Ghost, Amen. Be it Known to all Christ's faithful People present and to come, that I Edgar Son of Malcolm, King of the Scots, Possessing all the Land of Lodenyes, and the Kingdom of Scotland by the Gift of W. King of the English, and by Paternal Inheritance, by the Counsel of my said Lord W. King of the English, and of my Faithful People, for the Souls of me and my Mother, and also of my Brothers Duncalini and Edward, and for the Salvation of my Body and Soul, and for all my Ancestors, Give to God Almighty, and to the Church of Durham, and the Glorious Bishop Sr. Cuthbert, and to Bishop William, and to the Monks Serving, and for ever to Serve in that Church, the Manner of Berwic,

subscr.

Subscr. Greidone, Lem-
hale, Chistehale, Brieg-
ham, Ederham, Cirnesie,
Hilton, Blacedre, Cyna-
brytham, Hotun, Rawyn-
ton, Parton, Fulgelden,
Mordernston, Lambertton,
aliam Lambertton, He-
drynton, Horford, Upse-
tinton, & mansionem de
Coldingham, & cum
ista Mans. has Subsc.
M. Scil. Aldramby,
Lumesdune, Riscum,
Swinestan, Farndum, Ei-
tum, aliam Eitum, Pren-
cegest, Cramesmre, Hed-
dynton.

Farndum, Eitum, another Eitum, Prencegest,
Cramesmre, Hedynton.

Has subscr. Man. Do
Deo & Sancto Cuthber-
to cum omnibus terris &
Silvis & aquis & the-
loniis & fracturis novi-
um, & omnibus consue-
tud. quas pertinent ad præd.
M. & quas Pater meus
habuit, quietas & solidas
secundum volunt. Dunelm.
Ep. in perpetuum dispo-
nend.

and with that Mannor,
these following Mannors,
Greidone, Lemhale,
Chistehale, Briegham,
Ederham, Cirnesie,
Hilton, Blacedre, Cy-
nebrytham, Hotun,
Rawynton, Parton,
Fulgelden, Modern-
ston, Lambertton, ano-
ther Lambertton, He-
drynton, Fysewic, Hor-
ford, Upsetynton,
and the Manor of Cold-
ingham, and with that
Manor, these underwrit-
ten Mannors, viz. Al-
dramby, Lumesdune,
Riscum, Swinestan,

These underwritten
Manors I give to God
and St. Cuthbert, with
all Lands and Woods,
and Waters and Tolls,
Wrecks, and all Cu-
stoms which belong to
the said Mannors, and
which my Father had,
quiet and entire, to
be freely disposed
for ever, according to
the Will of the Bishop
of Durham.

Signum

*Signum Edgari, Signum Alex. Fratris sui, Signum Ligulfi fil. Memi-
arvi.*

Signum Gilberti fil. Dunecani.

Signum Oulari fil. Oge. Signum Urredi Tudern, Signum Edgari Adeling. Hæ Carta firmata est 4 Kal. Sept. Camiteria. Sci Cuthberti presente Dno. Episcopo & Turgoto Priore & Anskitillo Præposito de Norham, & Agero de Cornford.

The Seal of Edgar, of Alex. his Brother, of Ligulf, the Son of Memi-
arvi, of Gilbert, the Son of Dunecan, of Oular, the Son of Oge, of Urred, the Son of Tudern, of Edgar Adeling. This Charter was made firm, or passed in St. Cuthbert's Church-yard, in the 4th. of September, in the Presence of Will. Bishop, and Turgot, Prior, and Anskitil, Bayliff of Norham, and Ager of Cornford.

Appendix to the 2d. Part of the History of the Reformation. N.9.f.106.

If Mr. Ridpath had been as much concerned for Truth, as for a mistaken point of Honour for his Nation, which need not use any borrowed Trophies; as he made an Objection against Malcolm's Charter, from its not being mentioned in Bishop Burnet's History of the Reformation; he would have been so ingenuous, as to own that Tonsal, Bishop of Duresm, in the Reign of E. 6. having been writ to by the Council, to search all his old Registers, and ancient places where any thing could be found for the more clear declaring to the World, the King's Majesty's Title to the Realm of Scotland; the Bishop in a Letter to the Lord Protector Somerset, assures him, he had found many Homages made by the Kings of the Scots to the Kings of England; which he say appears by the Copies he then sends.

He

He adds, " You shall also find in the said Copies, of the Gift of the Barony of Goldingham, made to the Church of Duresm by Edgar the King of the Scots, which Original is under the Seal, which I shew'd unto to my Lord Maxwell at Duresm, in Presence of You, my Lord Protector.

" I find also a confirmation of the same Gift by King William Rufus in an Old Register, but not under Seal, the Copy whereof is here sent.

That the Monks of Durbam had not Forged this Charrer of Goldingham to colour Edward the 1st's exercise of the right of direct Domi- on over Scotland, appears by a Charter of the 11th. of King John, which runs thus,

Solatis nos concessisse & confirmasse pura & perpetua elemosina Deo & Sancto Cudberto & Priori & Mon. ib. Deo serv. suas terras & decimas & Eccles. & Fennas ad Priorat. Dunelm. pertin. viz. int. at Goldingham cum Eccles. e. usdem villa & omnibus ad eam pertind, &c. insuper omnia quæ in Lodoneia possidet pro voluntat. Mon. disponend. sicut carta Edgari Regis Scotor. testatur.

Know that we have Granted and Confirm- ed in pure and perpet- ual Alms to God and St. Cudbert, and the Prior and Monks there serving God, their Lands and Tythes, Churches and Tenures, to the Priory of Durbam belonging, viz. among other things, Goldingham, with the Church of the said Town, and all things thereto belonging, &c. And moreover, all things which it posses-

sesses in Lodeney; to be disposed of at the Will of the Monks, as the Charter of Edgar, King of the Scots, Testifies,

Which

Rot. Cart
9. Joh. m.
13. n. 108.
Cart. Mon.
Dunelm.

Edgar,
other, of
of M.
ert, the
an, of
of Ogbe,
Son of
ar Ad-
ter was
or pas-
withbert's
he 4th.
in the
will. Bl.
Prior,
nylls of
Edgar of
cerned
honour
y bor-
fection
being
of the
nuous,
in the
by the
and an-
found
d, the
otland;
or So-
Homa-
Kings
e Co-
He

Which is not only an Authentick Evidence of the Truth of King *Edgar's* Charter, but that *Lodeny* was in the *sub.* of King *John*, accounted part of *England*; for it cannot be thought that the Monks would have been at the charge of taking a confirmation from the King of *England* of any Grant of Land in *Scotland*, granted by a King of the *Scotts*.

If that were to be supposed, 'twould be a further Evidence of the direct Dominion of the Crown of *England*, than has hitherto been urged.

His Lordship of *Carlisle*, I perswade my self, would not have been so forward in censuring our *Historiographer* about *Malcolm's* Charter of Homage for the Kingdom of *Scotland*, if he had consulted those Original Charters to the Abby of *Coldingham*, and now kept in the Dean and Chapter's Treasury of *Durham*, of which his Lordship unwarily exhibited a List; among the rest,

Scotch Hist
Lib. Append. p.
363. n. 7.

Charters of *Edgar*, King of the *Scotts*, of *Coldingham* with the Appurtenances. Another of his, of Lands in *Lodeny*. And a Charter of our King *William*, which was *William 2.* confirming King *Edgar's* Grant.

And thus we have the present Bishop of *Carlisle* attesting the Truth of what *Tonstal*, Bishop of *Durham* in the time of *E. 6.* Appealed to the memory of the then Duke of *Somerset*, whether he himself had not seen under King *Edgar's* Seal.

Vid. Bib.
Cot Domi-
cian. A. 7. This Charter being freed from all possible imputation of *Forgery*, I may well observe upon it.

A. 1127. A Charter of the Bishop of *Durham*, agreeing that the Church of *Coldingham*, as other Churches in *Lodeny*, shall be under the Arch-Bishop of *St. Andrews*,
1. That

1. That *Edgar Atbeling*, who was a Witness to the Father's Charter to the Confessor, is one who attests this Gift of *Edgar King of the Scots*, and the Declaration contained in it.

2. The King of the *Scots* and his Uncle, declare, that though the Nephew had an Hereditary Right to the Kingdom of *Scotland*; yet it was the Gift of the King of *England*, as every Investiture is in the Feudal Law a renewal of the Gift, though 'tis of right upon performing the due Service.

3. That *Lodeny* is distinguished from the Kingdom of *Scotland* as a Fee by it self.

4. That without regard to that Fee, Homage was due for the Kingdom of *Scotland*.

5. That the King of the *Scots* then made no Pretence to either *Northumberland*, *Cumberland*, or *Westmerland*.

6. It being well known that one *Mr. Anderson* has been sent from *Scotland* to *Durham*, to transcribe the Antiquities there relating to *Scotland*, and particularly to their King's Grant of *Coldingham*, in which Homage for the Kingdom is so fully owned, it is to be hoped, that, in concurrence with what I have laid together, may prevent all further denials in a matter so evident.

C H A P. XXIII.

A short View of the Transactions between England and Scotland, in the Reigns of H. 1st. and King Stephen, making it Evident, that the Homage done by the King of the Scots, to the Crown of England, has been for the Kingdom of Scotland; and not for the Counties of Northumberland, Cumberland, Westmerland, and Huntingdon, or either of them.

FOR the grounds of *Homage* invented by the Scots, and their Officious Friends among the Moderns, we must descend to the two next Reigns.

H. I. who was a very Wise and Learnd Prince, was far from parting with any of those Rights of his *Crown*, which no Man understood better than himself.

It must be agreed that *W. Rufus's* Reign having much lessn'd the Reputation of the Normans, and revived that affection to the Saxon and British Race of Kings, which had lain cover'd, and seem'd extinguisht with the first *William's* Glory, King Henry was very desirous, by Marrying the Daughter of the Scotch Queen *Margaret*, *Edgar Atheling's* Sister, the more effectually to secure the Love of his People; and thereby gave them an earnest of his Resolution to be a true English King. King Edward the 1st. and his Council, say that on the Death of *Edgar* King of the Scots, *Alexander* Succeeded,

Adhuc
Rot. Claus.
29. E. 1.]

Con-

Concessu Regis Angl. By the Concession
H. I. of H. I. King of Eng-
land.

The *Saxon Chronicle* shews that this Concession Chron.
was a Grant or Investiture; For it says, *Alex-* Sax. Anno.
ander, Brother to *Edgar* went to that Kingdom, 1105.
as King *Henry Him geuthe*, Gave or Granted
him.

Alexander's Successor *David*, was such a Vid. Inf.
Favorite with our Monks, that generally those
Writers were more intent upon his Praise, than
any Account of his Submission: Which yet will
appear to have fallen from one of his great
Admirers. Certain it is, he could never have
been King of *Scotland*, without help from Ord. Vital.
hence, where he attended at Tryals in the f. 703.
King's Court among the rest of the King's An. 1130.
Barons.

" While he Sat upon the Tryal of one of his
" Peers, *Jeffery de Clinton*, News was brought him
" that the Earl of *Murray* with *Melcolf*, and
" 5000 Souldiers was enter'd *Scotland*, and en- Scotiam
" deavour'd to Conquer the whole Country intravit.
" for himself. &c.

" But *Edward* the Son of *Siward*, who was
" Tribune or Earl of the *Mercians* under King
" *Edward*, and King *David's* Cousin, Rais'd
" an Army, and gave Check to the Enemy.
" Then *David* enter'd *Murray*, left without
" it's Defender and Lord, and by God's
" Assistance gaining the Dukedom of a spa-
" cious Country, was exalted above his An-
" cestors.

Where 'tis observable, that *Murray* was not
till then accounted part of the Kingdom of
Scotland. As *David* was the Queen of *England's*
Brother,

Æthelredus
Ab. Riev.
f. 368.

Tradente

Rege

Henrico.

Ingulf.

f. 13.

1st. ed. f.

513.

** Bib. Cot.*

Claud.

D. 2.

Dedit Ho.

nor. de H.

cum M.

cogni sua

qua erat

Uxor prius

primi Se-

monis Sen-

lis, Comit.

H. & N.

cum Cus-

dia pueror.

suor.

Brother, the King gave him to Wife *Matilda* the Daughter of Earl *Walsbeof* and *Judith*, who was Neice to *William 1st.*

According to the account in some Historians the Earldom of *Northampton*, and Honour of *Huntingdon* were given *Walsbeof* in Frank-marriage, as a Dowry with *Judith*: For tho' *Walsbeof* was attainted and Executed, *Matilda* * his Eldest Daughter by *Judith*, carryed Honours to *Silvanact* her first Husband, and afterwards to *David*.

When he first Married her, she had by *Silvanact* two Sons, whose Custody *H. 1st.* committed to *David*, it wou'd seem as if they Dyed soon after, and *David's* Son was entitled to those Earldoms as Heir to his Mother.

But 'tis rather to be believ'd that the Earldom of *Northampton* was all that *W. 1st.* gave *Walsbeof* in Frank-marriage, and the Right of this Earldom went to the Son of *Simon Silvanact*: and accordingly it does not appear that *David*, or any of his Successors pretended to be Earl of *Northampton*.

The Honour of *Huntingdon Walsbeof* had by Inheritance from his Father, the great Earl *Siward*: This I take from better Authority than any of our Historians.

I find in the Great Survey.

G. D.
Huntedune.

In Burgo Huntedune
Siwardus Comes habuit
unam Mansionem cum
Soga & Saca, quæ modo
est quieta ab omni consue-
tudine; quam modo habet
Juditha Comitissæ.

In the Burrough of
Huntedune Earl Siward
had one Mansion or
Manor, with the Sog
and Sac, which now is
quies from all Custom;
now Countess Judith
has it.

She

She was the Widow of Earl Siward's Son *Ing.* 1st.
Walsbeof, and therefore tho' her Husband had *Ed.* 513.b.
 forfeited, she had this as part of her Dower.

This *Mansion* with the Jurisdiction belonging
 to it, was evidently the *Caput Baronie*, or Head
 of that *Honour*, upon which account *Ingulf*
 might have call'd her Husband *Silvanact* Earl
 of *Huntingdon*, as well as *Northampton*. Upon
 her Death it went neither to her Heir by *Sil-*
vanact, nor her Daughter by *Walsbeof*, who
 Marry'd *David*, but falling to the Crown by
 reason of *Walsbeof*'s Attainder, might well be
 granted out to *David* by *H. 1.*

While that King liv'd, *David* and his People
 seem to have observ'd their ancient *Allegiance* to
 the Crown of *England*; but there being a Com-
 petition for the Crown of *England*, and *David*'s
 nearest Relation kept out, he had the same
 pretence to withdraw his *Homage* from King
Stephen, as his Father *Malcolm* from *W. 2.* and
 might with like colour apply that Text, *no man*
can serve two Masters.

And yet a Zealous *Abbot* of that time con-
 demns him for it, even in a Letter writ to *H. 2.*
 and that notwithstanding *David*'s having Sworn
Allegiance to *H. 1st.* and his Heirs. Comparing
 his *David* to *David* King of *Israel*, "I confess
 says the *Abbot*, our *David* also sin'd, not indeed
 in soiling himself with any Vice, but admi-
 nistring strength to the Cruelty of others
 more than he ought.

"For after the death of *Henry*, when that
 fierce Nation, and most inimical to *England*,
 brought an Army into *England*, and inhu-
 manly raging against Priests, and both Sexes,
 exercis'd Cruelties against every Age, all which

Bib. Cot.
Julius A. 1.
De rebus.
David Re-
gis Scotiae
Illustrissim.
Duci Norm.
& Ag.
& Com.
Andegaviae
Henrico,
&c.

*Zelum
justitiæ
præten-
dentes
Sacramen-
tum quod
fecerat At-
tendentes.*

“ was done without his Will ; nay, against his
“ Orders ; yet he who might not, have declin’d
“ bringing them in, might, not have return’d
“ with them after experience had of them.
“ And we must with Tears confess that he
“ sinn’d. Others may excuse him, *pretending*
“ Zeal for Justice, attending to, or taking
“ Notice of the Oath which he had made ;
“ that he had taken Arms against a *perjured*
“ People ; that he had attempted to bring back
“ the Kingdom to the Heirs of it, which the
“ Father had delegated to them ; Which the
“ Clergy and People had confirm’d with a jura-
“ tory Caution:

Notwithstanding *David* had joyned with the
rest of King *Henry*’s Subjects in an Oath of *Al-*
legiance, according to the then Settlement of the
Crown, yet the States of the Realm having
thought fit to alter this Settlement, this grave
Author of the time, condemns King *David*’s at-
tempts to Set up that pretention to the Crown
of England ; and possibly he might have had
regard to what *Malsbury* reports of the Bishop
of *Salisbury*’s attestation, of what he had from
Henry the 1st’s. Natural Son *Robert* Earl of
Gloucester, to justify Swearing *Allegiance* to King
Stephen.

*Malsb.
f. 48. b.*

*Ego Rog. Salesb. Ep.
sæpe audiui dicentem
Solum se a Sacra-
mento, quod Imperatrici
fecerat. Eo enim pacto se
jurasse, ne Rex præter
Consil. suum & cæteror.
Procerum filiam suam*

*I. Roger Bishop of
Salisbury often heard
him say, that he was
Discharg’d from the
Oath which he made
to the Empress, for that
he Swore upon that
Condition, that the King*

enigmas

cuquam Nuptam daret should not Marry his
extra Regnum. Daughter to any body
 out of the Realm,
 without the advice of him and the rest of the
Peers.

John Prior of Hagulfad now *Hexam*, says,

David not unmindful of the Oath, which
 " he and the Universality of the Kingdom had
 " Sworn to *H. 1st* in relation to the Successi-
 " on, rais'd an Insurrection or Rebellion against
 " the Kingdom of *England*, and obtain'd all
 " the Forts of *Cumberland* and *Northumber-*
 " land, with the People adjoining, except
 " *Babamburch*.

Inter Scrip-
tores. 10.

f. 254.

An. 1136.

Insurrexit.

Which shews that till *King Stephen's* time,
Cumberland and *Northumberland*, with the parts
 thereabouts, were in the Hands of the *English*,
 and then Seiz'd by *David* in right of the Person
 to whom he contended that the Crown of *Eng-*
land belong'd, in Vertue of a Parliamentary
 Settlement.

Upon this the Kings *David* and *Stephen* com-
 pounded the Matter, *Henry David's* Son did
 Homage to *King Stephen*, and at *York* *Stephen* gave
 him *Doncaster* and *Carlisle* in augmentum Honoris de
Huntedune, in increase of the Honor of *Hunting-*
don; so that they there *de novo* added to that Ho-
 nor. and made to hold of it, which they did not
 before, but held immediately of the Crown of
England. *David* in Consideration of this, Re-
 stor'd to *Stephen* all the other Forts and Places
 which he had taken. So that *Cumberland* and
Northumberland with the parts Adjacent, were
 in quiet Possession of the Crown of *England*, as
 they had been before.

f. 258.

An. 1137.

King *David* having got well by this last Expedition, thought to grow upon King *Stephen*, and improve the Advantage the Disturbances in *England* seemed to offer. Therefore, the next year he sends Embassadors, demanding *Northumberland* for his Son. 'Tis Observable that he made no Pretence to it as King of *Scotland*; But for his Son, by the Grand-daughter of *Walsbeof*, who had been hereditary Earl of all those Parts. This was Colour to the Pretension. That it was but Colour is evident, *Walsbeof* having by his Attainder forfeited all the Land and Honours which he had in his own Right. *Stephen* refusing to comply with this unreasonable demand, *David* renewed his Hostilities.

Adhuc Pri-
or de Han-
gulfed.
An. 1138.

Actis Scottor
& Pictor,
&c.
An. 1139.

Then followed the Memorable Batrel of the Standard between the *English*, *Picts*, and *Scots*, where the *English* had an entire Victory. *David* at his return punished both *Picts* and *Scots*, who had slain foul upon one another, and exacted from them fresh Oaths of Fidelity to him.

Which shews that to that very time, the *Picts* were accounted, and acted as a distinct Body of People. The next Year, at the Instance of the Queen of *England*, a Peace was concluded between the two Kings at *Durham*. *Henry*, King *David*'s Son taking the County, or Province of *Northymbria*, or the parts on the North of *Humber*, which as will soon appear, was agreed to reach beyond the County of *Northumberland*.

This Agreement is said to have been made at *Duresm*, before the Earls and Barons of *England*, Hostages being given by the *Scots* in firmamentum fidei, for assurance of their Fidelity.

So that the *Scotch* Nation, or such as then represented them there, as well as their *King*, owned *Allegiance* to be due to the Crown of *England*, and gave Hostages as Pledges for their Truth. It would seem by what followed, that the putting those Parts under the Son of the King of *Scots*, which tended to the disherison of the Crown of *England*, was not in full Parliament: For *Henry* and his Wife coming to King *Steven's* Court, *Ranulph* Earl of *Chester* F. 1. 62. professed himself his Enemy, because of *Carlisle* and *Cumberland*, which he claimed by right of Inheritance.

This was under the Grant above mentioned by *VV. 1.* to *Ranulph de Meschines*.

An. 1150.

Ranulph taking part with *Henry*, afterwards King of *England*, who was received with great Ceremony at *Carlisle* by King *David*, quitted his Indignation against *Henry*, Son to the King of *Scots*, and did Homage to *David*.

This was upon an Agreement that *Ranulph* should have the Honour of *Lancaster*, and his Son should Marry one of the Daughters of *Henry, David's* Son.

Where 'tis observable,

1. That *David* takes advantage of the Grant to his Son *Henry*, and receives Homage of the Earl of *Chester*, as under the *Northanbymbrian* Kingdom.

2. That the Honour of *Lancaster* was then known to be within that Dominion, and therefore *David* and his Son disposed of it to the Earl of *Chester*. But where is the Prince of *Cumberland* all this while?

If the pretence for the Eldest Son of the King of Scots to have that Title had been thought of in those days, it would not have been omitted at that time, when the concurrence of the Competitor for the Crown of England encouraged the King of Scots and his Son, to carry their Pretensions as far as they could bear. And if it had not been thought of then, it might have been before, when David fought for any pretence to quarrel with King Stephen.

A. 1052

But though the Earl of Chester was prevailed with to do Homage to King David; all that he could get from the People of the Northumbrian Province, when he afterwards entred it with an Army, was to oblige the Princes, or Great Men there to give Hostages for their continuing under the Government of his Son.

C H A P. XXV.

The Charter of Homage for the Kingdom of Scotland, to Hen. 2. and his Son; and the like performed afterwards in a Parliament of both Nations at York.

IT must be agreed that David, King of the Scots, had merited very much of H. 2. and greatly contributed to the Settlement of the Crown of England upon him in remainder, after the death of King Stephen: and therefore

fore without good Proof to the contrary,
 'tis not to be thought that H. 2. would exact
 more from the King and Kingdom of Scotland,
 than was the Ancient Right of the Crown of
 England. The Convention or final Agreement
 between the then Kings of England and Sco-
 land, settling all Matters in dispute, was as
 follows,

" This is the Convention and End which
 " Will. King of Scotland made with Lord Henry,
 " King of England, Son of Maud the Empress,
 " W. King of Scotland became Liegeman of the
 " Lord the King against all Men for Scotland,
 " and for all his other Lands, as other his Men
 " use to do.

" And in the like manner he did Homage
 " to Henry the King's Son, and Fealty, saving
 " the Faith of the Lord the King his Father.
 " Besides, all Bishops, Abbots, and Clergy of the
 " Land of the King of Scotland, and their Suc-
 " cessors, shall do to the Lord the King Fealty, as
 " to their Liege Lord, as other his Men use to
 " do.

" Also the King of Scotland has Granted,
 " and David his Brother, and the Barons, and
 " other his Men, to the Lord the King, that
 " the Church of Scotland shall for the future
 " pay such Subjection to the Church of England,
 " as it ought, and use to do in the time of
 " the Kings of England his Predecessors,
 " viz. Richard, Bishop of St. Andrew's, and
 " Richard, Bishop of Dunkeldyn, and Jeffry, Ab-
 " bot of Ouspermelyn, and Herbert, Prior of Gold-
 " ingham, that the Church of England have that
 " Right in the Church of Scotland, which of Right it

Bib. Cot.
 Domitian
 A. 19 Lib.
 Regensis
 p. 1 b.
 Conventio
 inter Roger
 Anglia &
 Scotia.

ought to have, and that they will not be a-
 gainst the Right of the Church of England;
 as they have done the *Fealty* which the Law
 requires, to Lord Henry, the King, and
 King Henry his Son, and have assured them
 thereof.

Ligeantiam

The very same the other Bishops and
 Clergy shall do, by the Conventions made
 between the Lord the King, and the King
 of Scotland, and David his Brother, and their
 Barons.

But the Earls, Barons, and other men of the
 Land of Scotland, of whom the King will have
 Homage, shall do him Homage, against every
 Man, and Fealty as other his men used to do,
 and to King Henry his Son and his Heirs, sa-
 ving the Faith of the Lord the King his Fa-
 ther.

Ligeantiam

In like manner the Heirs of the King of
 Scotland, and of the Barons, and men, shall
 do Homage and Allegiance to the Heirs of
 the Lord the King against every man.

Moreover, the King of Scotland and his
 men shall receive no Fugitive, from the Land
 of the Lord the King for Felony, into Scot-
 land, or other his Land, unless they will
 come to right in the Lord the King's Court,
 and stand to the Judgment of the Court.
 But the King of Scotland and his Men shall
 take them as soon as they can, and return
 them to the Lord the King, or his Justices,
 or Officers in England.

But if any man be a Fugitive in England
 from the Land of the King of Scotland for
 Felony, unless he will come to right in the
 Court of the King of Scotland, and stand to
 Judgment

" Judgment of the Court, he shall not be received in the Land of the Lord the King, but shall be delivered to the men of the King of Scotland, by the Lord the King's Officers where he shall be found.

" Moreover, the men of the Lord the King shall have their Lands which they have, and ought to have of the Lord the King, and of the King of Scotland, and of their men, and the men of the King of Scotland shall have their Lands which they have, and ought to have, of the Lord the King and his men.

" And for this Convention and End firmly to be observed to the Lord the King, and Henry his Son, and their Heirs, the King of Scotland shall deliver to the Lord the King and his men, the Castle of Rokesburgh, and the Castle of Berwic, and the Castle of Edenburgh, which is called the Castle of the Girls, and the Castle of Striveling to be at the Lord the King's mercy.

" And for the Custody of those Castles the King of Scotland shall assign of his Revenue proportionably, at the Lord the King's Will.

" Moreover, for the performing the said Convention and end, the King of Scotland delivered David his Brother for an Hostage, and Earl Duncan, Earl Walden, Earl Gibb, &c. But when the Castles shall be Restored, William, King of Scotland, and David his Brother shall be delivered, and after that, the Earls and Barons above named shall every one have delivered an Hostage, viz. his own legitimate Son who has one, and others their Grand-sons, or next of Kin, their Heirs, and the Castles being delivered, shall be delivered out of Prison. " More-

In misericordia Domini Regis.

" Moreover, the King of Scotland and his
 " Men give assurance, that they will deliver
 " the Castle to the King, and will perform
 " the Allegiance to the Lord the King and his
 " Son Henry which they had done, and agreed
 " to do, and with their Lord would do it Faith-
 " fully, without Trick, and without cause of
 " Exception. That the Bishops, and Barons,
 " and Free-men of their Land, who were not
 " present when the King of Scotland concluded
 " an Agreement with the Lord the King, shall
 " keep an Hostage with the King as with their
 " Liege-Lord, against all Men who injure him.
 " And the Bishops shall put under Interdicts
 " the Lands of the King of Scotland, till he re-
 " turn to the King's Faith.

" And that the said Convention shall be
 " observed in good Faith, and without Guile,
 " to the Lord the King, and to Henry his Son,
 " by William King of Scotland, and David his
 " Brother, and their Barons, and their Heirs,
 " He, the King of Scotland and David his Bro-
 " ther, and all their Barons abovenamed give
 " assurance, as they have become the Liege-men
 " of the Lord the King against every Man, and
 " of Henry his Son, saving the Faith of the
 " Lord the King, his Father.

This Instrument was Signed at Falais in Nor-
 mandy; but before this; the King of Scots and
 his Brother had done Homage to H. 2. and
 his Son, as other Subjects of the Crown of En-
 gland had done.

Ben. Abbas
 in Bib. Cot. it.
 p. 29 fo.
 An. 1170.

For as Benedict, an Abbot of the time has
 " After the Solemnity of the Estates was
 " over, King Henry went to London, and there
 held

' held a great Council about the Coronation of
' Henry his Eldest Son, and the State of the King-
' dom. There he turned out most of the Sheriffs
' of England, and their Officers.

' Then he Summoned Roger, Archbishop of
' York, and Henry, Bishop of Duresm, and the
' other Bishops of the Kingdom, to be at London
' on St. Barnaby's Day, to Crown Henry, his
' Eldest Son.

This was done at that Council; almost all the
Earls and Barons, and most Nobles of the King-
dom being present.

*Nobilitas
bus Regni.*

' The next Day after the Coronation, he
' made William, King of Scotland, and David
' his Brother, and all the Earls and Barons, and
' Free-holders of his Kingdom, to become the
' Men of the New King his Son.

P. 30.

*Francos te-
nentes.*

Hence 'tis evident that the King of Scots
and his Brother joyned in the same Allegiance
with the Earls, Barons, and Free-holders of En-
gland.

At that time the King did not seem wise
enough to have a *Salvo* for the Allegiance due
to himself.

Certain it is, that the Son, not Contenting
himself with only the Name of King, set up
for full Exercise of the Authority, in Opposi-
tion to his Father.

And the better to carry on his Design, he
went to *Durham*, where he us'd a New Great
Seal, and having Summoned, or Invited the
King of Scotland to come to his Side, he Grant-
ed him for his Homage and Service, all *Northum-
berland*, as far as the River *Tine*, and granted
David for his Homage and Service, the County
of *Huntingdon*, and added to it the County of
Cambridge.

Ben. Ab.

P. 47.

But

But the King Prevailing, the Grants of his Son Passed for nothing.

To remove all Objections against the Allegiance, of which King Henry had been so Solemnly as above-assured at *Falais*, by the King of Scots and his Brother, with many of the Great Men of Scotland, in the Name of their Nation and Church; our King having held a Great Council, or Parliament at Nottingham, Adjourn'd it to York.

Ben. Ab.

An. 1075.

Thither he came on the Feast of St. Laurence, where he was met by William, King of Scotland.

Qui secum adduxerat omnes Episcopos, & Comites, & Barones, & Milites, & Francos tenentes terræ suæ, à maximo ad minimum, ad faciendum ibi hominum, & ligentias, & Fidelitates, Regi Angliæ & heredibus suis in perpetuum, contra omnes homines.

Sicut convenit inter eos apud Falesiam in Normannia, antequam Rex Scotiæ de ergastulo ejus exiret.

Itaque Congregatis omnibus in Eccles. Sancti Petri Ebor. Illustrissimus Rex Scotiæ Præcepit Ep. & Comit. & Bar. terræ

Who had brought along with him all the Bishops, and Earls, and Barons, and Knights, and Free-bolders of his Land, from the greatest to the least, there to do Homages, and Allegiances, and Fealties, to the King of England and his Heirs for ever, against all Men.

As it had been Agreed between them at *Falais* in Normandy, before the King of Scotland went out of Prison.

Therefore all being Assembled in St. Peter's Church at York, the most Illustrious King of Scotland, commanded his Bishops, and Earls, and Barons,

sua facere ligeantiam, & Fidelitatem, & hominium Regi Hen. fil. Matildæ Imp. & Hen. Regi fil. suo, sicq; factum est. Et imprimis Rex Scotiæ & David frater ejusdem devenerunt ibidem homines præd. Regis de omnibus tenementis, & nominatione de Scotiâ, Salva fide Dom. Regis patris sui.

to do *Allegiance*, and *Fealty*, and *Homage*, to King Henry Son of Maud the Empress, and to his Son; and so it was done. And in the first place the King of Scotland, and David Brother there became the Men of the said K. for all they held, and for Scotland by name; saving the Faith of the Lord the King his Father.

But in the *Allegiance* Sworn by the *Scotch* Nobility and Freeholders, there was no saving of the Faith of their King.

It cannot be pretended that this is asserted only by *English* Historians; for the *Scotch* Register of *Mailros* says,

Comites, & Barones, & omnes Majores & potentiores per regnum Scotiæ, coram Rege suo Will. ligeantiam fecerunt, & obsides dederunt, & Episcopi ejusdem in verbo veritatis fidelitatem juraverunt H. Regi Angli. Civitate Eboraci.

The Earls and Barons, and all the Great Men, and Men of Power throughout the Kingdom of Scotland, before their King William performed *Allegiance*, and gave Hostages, and the Bishops of the said Kingdom Swore *Fealty* in

Chron. Mailros. An. 1175.

the word of Faith, to Henry, King of England, in the City of York.

Sir

Sir T. C.
p. 194.

Sir T. C. who was not acquainted with this part of History, that the King of Scots and the States of his Kingdom, at full Liberty, Recognized the superiority of the King of England over that Kingdom, in a Parliament at York; Argues only upon what was done while the King of Scots was a Prisoner. He agrees the Fact, that *William* then promised, that he and his Successors should hold the Kingdom of Scotland in Fee of the King of England for ever; but then arguing upon part of the Fact, he says,

“ Certainly he who is in the power of an
“ Enemy, or detain'd Captive may easily be
“ compelled to do any thing. But the Laws
“ allow him this Relief, that being at Liberty,
“ he is not obliged to perform what he promised against his Will; and therefore, whatever
“ was done, said, or promised by King *William*,
“ then in the Power of his Enemies,
“ and having no hopes of Redeeming himself
“ otherwise, is accounted null and void in
“ Law; and seeing Princes do but seldom go to
“ Law with one another, there is no need of a
“ Declaration, to use the Law Phrase, to make
“ this void in Law.

Not to observe, that if this were according to the Law of Nations, Captive Princes being incapable of Treating, could never obtain their Liberties upon any Terms; the circumstances of the story shew, that this Doctrine does not reach the Case. For,

1. The Terms in relation to the Subjection, were so far from Hard, that they were but Declaratory of the inherent Right of the Crown of England.

2. But

2. But to silence all *Cavils*, the Submission made by Prince and People at full Liberty, would not be the less effectual, because it was in pursuance of a former Promise; because, if it had been to be Objected against, it is not to be thought that it would have been performed.

If it be said that the *Scotch* Nation could not have had Peace, or the Hostages they had given, restored without this, and therefore they were not at full Liberty: It may as well be said, they were never capable of contracting, being always Subjects to the Crown of *England*.

C H A P. XXV.

Of Homage in the time of H. 3. without regard to any particular Lands but Lodeny, with a saving of the Right of the Crown of England. Of Homage expressly for the Crown from Scotland.

I should not have looked lower for proofs of the Right of the Crown of *England* to Homage for the Kingdom of *Scotland*, had not my Zeal for Truth been a little warm'd, at observing the unfairness of Sir *Thomas Craig*, and the great oversight of the Moderns, who have not attended to demonstrative evidences in an Author with whom every Body that pretends to know any thing of our *English* History, must needs be conversant.

This is the Historiographer to *H. 3. Matth. Paris*. He shews that in the 20th. of that King *Alexander* the 2d. King of *Scotland* demanded

An. 1236.

20th. H. 3.

Nor-

In Maritima. Northumberland, which he claim'd as given him Frank-marriage by King John, when Alexander Married his Daughter. This was in a Parliament at York; and it seems the Parliament disapproved the giving of that (tho' it could be no more than the Government of the County) for the King offer'd but 80 Marks in Lieu of it; which not being accepted there was then no agreement.

But this makes it evident that Northumberland was not claim'd upon any ancients Right than the gift of King John.

An. 1237. The next Year they came to an agreement
at H. 3. in a Parliament at York, that the King of Scotland should have *trecentas libratas terrarum, sine Castri Constructione*, " three Hundred Librates Land without the Building of a Castle, or power to Build any.

A Librate has generally been taken for so much as was worth 1 Pound by the Year, of which 20 in those times were accounted a Knights Fee, so that this was 15 Knights Fees.

On the otherside the King of Scots was " to do Homage to the King of England, and a League of Friendship was to be Establish'd, and the King of the Scots to swear that he would Faithfully perform this to the King of England. Where

1. The doing Homage was without respect to any particular Lands held in England.

2. There was not only to be Homage, but an Oath of Fidelity or Allegiance.

This agreement, as will appear, was not executed till the 26th Year of King Henry's Reign, and yet in the 24th the King of the Scots executed this Charter.

Alex.

„ Alexander by the Grace of God King of Scot- *An. 1240.*
 land, to all Christian People who shall see or *24. H. 3.*
 hear this Writing, Greeting. We will that it
 come to your Knowledge, that we for us
 and our Heirs, have Granted and Faithfully
 promis'd to our most Dear and Leige Lord
 Henry the 3^d. by the Grace of God Illustrious
 King of England, Lord of Ireland, Duke of
 Normandy and Aquitain, and Earl of Anjou,
 and to his Heirs, that we will for ever pre-
 serve true Fidelity to him, and Love ; and
 that we will never enter into any League by *Borain f-*
 our selves, or by any others on our part *dem.*
 with the Enemies of the Lord the King, or
 of his Heirs, to procure or make War, whence
 Damage may, or in any manner can arise to
 him, or his Kingdoms of England and Ireland, or
 other his Lands, unless they unjustly grieve
 us. Saving the agreements between us and
 the said Lord the King of England lately en-
 tred into at York, in the presence of Lord
 Osbo, with the Title of St. Nicholas in the
 Tullian Prison. And saving the agreements
 made upon the Marriage to be Contracted
 between our Son and the Daughter of the
 Lord the King of England.

Then follow the Names of many of his great
 Men, whom he had caus'd to Swear that he
 should perform on his part, and a Clause that
 his Barons should Rise against him, if he acted
 contrary to that Charter.

Upon this, 'tis evident that at a time when
 H. 3. was in no Condition to extort rigorous
 terms from the King and Kingdom of Scotland,
 the King and Great Men recogniz'd Leige Ho-
 mage, or Allegiance, to be due to the King of

T

Eng-

England, and particularly bound themselves to what did but result from that Allegiance, and yet was fit to be express'd to avoid all occasion of Controversie.

1. That the *Leigeman* should not joyn with his Prince's Enemies.

2. That if he did not in every respect keep to his Duty, his immediate Subjects should be discharged of their Allegiance to him, and Pay it to the Superior Lord.

All this being without regard to any Lands holden in *England*, makes it evident that was *Leige Homage* for the Kingdom of *Scotland*.

Rot. Claus.
26. H. 3.
m. 2 d.

Tho' according to *Matthew Paris*, and the Record of the 26th of H. 3. it was agreed in a Parliament in *York* in the 21st. that the King of *Scots* should have a quantity of Land in *England*, in Lieu of all his Demands, which as the Record shews, was but 200 *Librates*, or 10 Knights Fees; The King of *Scots* not having given full satisfaction, had not the Land Assign'd him till the 26th Year.

Rot. Pat.
26. H. 3.
p. 3. m. 9.

This is Evident by the Close and Patent Rolls of that Year; for as the Close Roll recites the agreement, the Patent Roll shews, that the 200 *Librates* were then extended to the Use of *Alexander King of Scotland*.

Vid. Mat.
Par. Sup.

'Tis observable upon the Patent Roll, That the King of *Scotland* had Demanded 15000 Marks, which *William* his Father had Advanced to King *John*, and claim'd *Northumberland*, *Cumberland*, and *Westmoreland*, which it seems he thought he had duely Purchas'd for the 15000 Marks, if he had it not in *Frank-marriage*. He further insisted on an Agreement that H. 3. should Marry his Sister *Margaret*, and *Richard*

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our Kings Brother, his Sister *Isabel*.

But these and all other Demands he releas'd; in Consideration of the 10 Knights Fees, which he had in the 26th. of *K. Henry's* Reign. Which faithful account from the Records, makes it evident, that the Charter of *Homage* was without any regard to *Northumberland, Cumberland, and Westmerland*, or any Land within those Counties other than the 10 Knights Fees; of which there was then but an expectation, but no *Investiture* till afterwards.

This further shews, that the *Homage* which shall appear to have been perform'd after the 26 of *H. 3.* could have no relation to either of those Counties, all pretence to which was then fully Releas'd.

The Marriage of the King of Scots Son to *Mat. Par.*
H. 3^d's Daughter, part of the Agreement in the *An. 1252.*
Parliament at *York*, 21st *H. 3.* took not effect, till the 36th. after the Death of *Alexander* the 2^d.

Here *Sir T. C.* according to his common way of Triumphant with Authorities point blank against him, has a Passage which it may be of good use to Transcribe: Having no Mercy upon poor *Hollingshed*, he tells him,

" You are not only Purblind, but Stone-
" blind in your History, to assert that *H. 3.*
" never Demanded *Homage* from *Alexander* his
" Son-in-law, because he was not of Age to
" perform it; or at least, you craftily Dissemble,
" as if you had not Read *that which* Cuts the
" Throat of all this Controversie.

" And therefore I will oppose to you the
" very Words of *Matthew Paris*, lest I should
" seem to have contriv'd any thing of my own
" Head.

De Regno
scil. Angl.
Londano
& terris
Reliquis.

“ The King of the Scots in the time of the
“ Marriage, did Homage to the King of Eng-
“ land, upon the account of the Tenement (Te-
“ nementi) which he held of his Lord the King
“ of England in the Kingdom of England, and
“ the rest of the Lands of Lenden or Laudon,
“ which is a Tenement of Northumberland; and
“ when this was agreed upon, it was also de-
“ manded that the King of Scots should per-
“ form Homage and Allegiance to his Lord the
“ King of England, on account of the King-
“ dom of Scotland, as his Predecessors had done
“ to the Kings of England, as is evidently set
“ forth in many places of the Chronicles.

“ The King of Scots answer'd, that he
“ came thither in a peaceable Manner for the
“ Honour of the King of England, and by his
“ Command, to enter into a Confederacy with
“ him by Mystical Ties, and not to give him any
“ answer to that Question, for he had not de-
“ liberated with his Nobles upon that Head;
“ nor had he a Council with him Competent
“ for so great an Affair.

Sir T. C. adds,

“ In this answer it is to be observ'd, that the
“ Words [as his Predecessors had done to the
“ Kings of England, as is evidently set forth
“ in many places of the Chronicles] are Paris's
“ own Words, and therefore frivolous and
“ vain. For neither does Paris, nor any other
“ English Chronologer, ever make mention of
“ Homage perform'd for the Kingdom of Scot-
“ land, except that which was exacted from
“ King William, during his Captivity, of
“ which I have treated before; or if they have
“ any Author, why are they afraid to name
“ him?

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" him? For as to all the former Citations, I have
 " clearly refused them already; but in this
 " performance of *Homage*, *Alexander* did Right,
 " in performing it for the Lands which he held
 " in *England*, but refused it for *Scotland*, as he
 " ought indeed to have done.

In this Quotation, over which Sir 7. C. thus
 flourishes his Sword, he was the less excusable
 as he writ in Latin, and therefore ought not
 to pretend to explain words while he is quoting
 them, as a Translator may sometimes: But whe-
 ther the Fault was in him or his Translator, I
 cannot judge, not having seen his Latin Copy.

I am obliged to take it all as his Words; and
 though I shall avoid using any expression, which
 such sort of Quotations might provoke a Man
 to, I cannot but observe, that he need not have
 been so hard upon *Hollingshead*, for holding
 that the Homage which he asserted to be due,
 was not Demanded because he was not of Age
 to perform it; Since a Reason very like it was
 given, That the King would not Molest a King so
 Young, and a younger Bridegroom.

The Words and Sense of *Matthew Paris*
 are as scurvily treated, as poor *Hollingshead*: *Mat.*
Paris says,

*Fecit Rex Scotix Re-
 gi Angl. Homagium ra-
 tione Tenementi quod te-
 net de Domino Rege; de
 Regno scilicet Anglix,
 Laudiano viz. et terris
 reliquis.*

The King of *Scot-*
land did Homage by
 reason of the Tene-
 ment which he holds
 of the Lord the King,
 that is to say, of the
 Kingdom of *England*,
 to wit, *Londian*, or *Lo-*
thian, and the rest of his Lands.

To Disguise what would be too visible if the
 true Words or Sense had been given, what

Mat. Paris
F. 555

*Tam juve-
 nem Regem
 & junio-
 rem spon-
 sum mole-
 stare.*

Paris makes a Tenement, something in Tenure, of the Kingdom of *England*, *Sir Thomas Craig* or his Translator renders, within the Kingdom.

Not but that those Parts were truly within the Kingdom of *England*; but *Matthew Paris*, who was no great Friend to the Prerogative of the King, takes care that the Tenure should be understood to be of the Crown of the Kingdom.

And though those Parts were within the old *Northanbymbrian Kingdom*, the Historian takes no notice of that, but [which is a Tenement of *Northumberland*] is entirely added to *Paris's* Text.

For a further Disguise, the Cramp Name of *Leuden*, or *Laudon*, is given to *Laudian*, or *Lothian*, the old *Pictland*, which, as has appeared above, *Edward the Confessor* gave to King *Malcolm*, and *W. I.* confirmed to him, upon his doing Homage for the Kingdom of *Scotland*. Thus I have taken off the Disguise from this plain Confession of the King of *Scots* in the 36th. of *H. III.* that all *Lodeny* was enjoyed of the Grant of the Crown of *England*: which is a full Confirmation of what I have shewn above, of Homages for the Kingdom of *Scotland* upon the Grant of *Lodeny*, and Investiture afterwards, not only with that *Fee*, but with the Kingdom of *Scotland*. Having shewn that, with much more to the same purpose of ancient times, from Authorities which *Sir T. C.* has offered nothing against, and perhaps with which he was very little acquainted; I need not repeat any thing in Answer to his Challenge

Challenge upon this Head ; but must observe, that all the words which he says are *Matthew Paris* his own, cannot but have great weight, if they were so, they carrying his Attestation that many places of the *Chronicles* evidently set forth, that the Kings of *Scotland* had done *Homage* to the Kings of *England*, on Account of the Kingdom of *Scotland*. But the contexture of *Paris's* words shews that this was urged at the King of *Scots* doing that *Homage* ; and as is most probable, by the *Chief Justice*, it being in the *Kings Court*. But the King not being willing to have it press'd upon his Son-in-Law on the Wedding-Day, took the Recognition for *Lo-deny* and other Lands, without which the Kingdom of *Scotland* would be considerably Dis-membred.

C H A P. XXV.

That the Scots from of Old, to the time of H. II. and downwards, were more immediately under the Crown of England than is necessarily implied, by Feudal, or even Liege-Homage for the Kingdom. Their Subjection. 1. In Spirituals. 2. In Temporals, undertaken to be proved. And 1st. of it in Spirituals.

HAVING as above deduced the Title of the Crown of *Scotland* to *Homage* for all which now obtains the Name of *Scotland*, from within the *British times*, to the end of *E. I's* Reign,

I shall shew that the direct Dominion which that Glorious King Claim'd, and Asserted to the full, was exercised by enforcing the same Laws.

I. In Spirituals, or in Ecclesiastical Matters.

II. In Civil.

1. Sir Thomas Craig Objects against the Inference from the Supposition, that their Clergy are Subject to an Archbishop here, with better Colour than he uses in most places; and it must be own'd that such Superiority would not of it self infer the Superiority of the Civil Power, otherwise than as it was a means to secure the Subjection which was before due; and unless it was attended with Circumstances, which shewed an Union under a Civil as well as an Ecclesiastical Head; which Circumstances appearing, the Challenge to prove the Subjection of their Church to ours is by no means to be declined, especially since a Learned Prelate of our Church; Censures a considerable Evidence of the Superiority and Power of an English Arch-Bishop, as justly liable to Exception, and as thought, by Men of Skill, to favour strong of the English Cloister.

Scotch Hist
Lib. p. 357.

B. 309.

Sir T. C. who understood this matter better, wisely takes Advantage of the Mistakes of Holingshead and Polydore, and denies that the Arch-Bishop of York originally had, and continues to have, the right of Jurisdiction and Supertority over all the Bishops of Scotland.

He calls the Inference from this a Trick; but I say the Trick lies in the state of the question.

For the true question is of the Right of the Metropolitcal See of Canterbury; and this Sir T. C. could not but have seen in his Oracle Bede.

The

The *Romish Apostle Austin*, whose Acts are *Bede's* chief Subject, coming to bring Men under Subjection to the See of *Rome*, and to a Canonical Observance of *Lent*, the great Points of Christianity which he was intent upon, was received as one sent by Christ's *Vicar*, to teach the Word of God.

Having wrought himself into the favour of *Chron. Sam*
Æthelbrycht King of the *Cantuarians*, but at *An. 596.*
that time the most Powerful, or Chief King of the Island, he, with great Success made use of both Swords to carry on, what, according to the Blindness of that Age, was thought God's Cause.

Having received a Consecrated Cope from *Rome*, he was dubb'd Pope of this other World, and Communicated his, and the Pope's Spirit; to some other *Booted Apostles*; who after they had used the most effectual means to silence the *British Preachers* of the Gospel, set up a flourishing Hierarchy: And *Austin* getting to be the Head by the Pope's Recommendation, was very grateful in his Returns to the See of *Rome*.

As while there were many Kings within this Island, there was generally one above all the rest, so it was with the *Spiritual Princes*; and as *Mr. Dodwel* makes *Jerusalem* the Mother-Church, because the Gospel was first Preached there; for the same Reason *Canterbury*, made Sacred by *St. Austin's* coming first thither, was the Metropolis of all *Britain*, and as far as that new Light spread, *St. Austin* was look'd on as the immediate Head of the Church next to the Pope.

If *Austin's* Summons to Councils or Synods were not held as Authoritative as the Chief King's,

King's, at least he was joyn'd with him ; and if barely the Meeting upon the *Metropolitical* Summons would not prove the Superiority of the Prince, yet when ever the King alone Summon'd, or joyn'd with the Arch-bishop, it manifestly shew'd that the Summons was from a King own'd for *Monarch* of the whole *Island*, by all who obeyed the Summons. Presidents of both kinds are frequent in Sir *Henry Spelman's* Collection of Councils. A Synod at *Worcester*, held by *Austin*, was at Sir *Henry Spelman* observes, truly *Panbritannica*, of all *Britain*, for there were a multitude of *Britons*, also *Scots*, and some *Picts*, Litigating about *Easter*.

Spelm.
Concil.
1 Vol.
f. 101.
An. 601.

f. 168.
An. 680.

There was another Council of all *Britain* at *Hedtsfeld*, *Theodore* Arch-bishop of the *Island* of *Britain*, and of the City of *Canterbury* presiding, the rest of the Bishops of the *Island* sitting with him.

f. 189.
An. 694.

There was a great Council at *Becanceld*, *Witred* King of *Kent* presiding, and also *Bertwald* Arch-bishop of *Britain*.

f. 193.
Citing
Bede.
*Plurima
pars Scotor.
in Hiber-
nia.*

At this the *Scots* were ; but yet *Bede* calls them *Scots* from *Ireland*, as if their abode here was not then accounted fix'd.

Bede.lib.3.
c. 29.

Bede, who would not allow any King to be Superior to his *Northanbymbrian* Kings, speaking of the Death of *Deus-dedit* Arch-bishop of *Canterbury*, says,

' In these times the most noble Kings of the English, *Oswi* of the *Northanbymbrians*, and *Egbert* of the *Cantuarians*, holding a Council together what ought to be done about the State of the Church of the English, (for *Oswi*, tho' E-

ducated

educated by the *Scots*, truly understood that the Roman was the Catholick Church) with the Election and Consent of the Holy Church of the English Nation sent a good Man, *Wighard* a Presbyter of *Deus-dedit's* Clergy, and fit for a Bishoprick, that having received the Archiepiscopal Degree, he might Ordain Catholick Bishops thro' all *Britain*.

He was prevented by Death, and *Theodore* Succeeded to this Metropolitcal Power.

In his time *Wilfred* Archbishop of *York*, was call'd Bishop of the *Northanhymbrians*: That whole Kingdom was immediately his Province, but *Canterbury* was Superintendent over all. Bede
f. 272.

That all the Episcopal Church of the *Picts* and *Scots*, were under his Care, appears by this passage in *Bede*.

Edbed, *Bosa*, and *Eata*, were Ordain'd at *York* by Archbishop *Theodore*, who also 3 Years after *Wilfred's* Abscession, or Abdication, added two Bishops to their number, *Tumberht* to the Church of *Hagulstad*, *Eata* remaining at *Lindisfarn*, and *Trumwin* to the Province of the *Picts*, which then was under the Dominion of the *English*. f. 291.

But as to the Superiority of the See of *Canterbury* over the whole Church throughout *Britain*, the Point was so fully Settld in a great Council at *Westminster*, upon the Dispute between *Lanfranc* Arch-bishop of *Canterbury*, and the then Arch-bishop of *York*, that no Man who has attended to our ancient Historians can question it.

Brompton agreeing with others, says, that in that Council, the History of *Bede* having been Brompton
& al. de
An. 1071.
Read

‘ Read, ’twas shewn that from *Augustin’s* first coming, to the end of *Bede*, which was about 140 Years, the Arch-bishop of *Canterbury* held the Primacy over the whole *Island of Britain* and *Ireland*.

Gerv. Do-
rob.
f. 1633.
de Anno.
605.
And ’tis observable that *Gervase* of *Canterbury*, who liv’d in *H. 2d’s*. Reign, says of *Austin*, That “ he not only took care of the new Church, “ gathered out of the *English*, but of the *Scots*, “ who Inhabit *Ireland* : the only Country of the *Scots*, then being by him, as well as *Bede* taken to be *Ireland*.

It does appear from what I have shewn, compared with the Letter from the King of *Scots* to the Archbishop of *Canterbury*, in the time of *H. 1st.* that none but the Arch-bishop of that See us’d to Consecrate the Arch-bishop of *St. Andrews*, the chief Bishop of *Scotland*.

Vid.
Mon. 1.
Vol. 44
But after *Lanfranc* had gain’d his Point of Supremacy, in the Council of *Winchester*, where *Lanfranc* joyn’d with the Arch-bishop of *York*, in settling the Diocess of the Bishop of *Durham* ; It seems by that Letter and other Circumstances, that he Resign’d the immediate Government of the Church of *Scotland*, at least the Consecration of its Bishops, to the Arch-bishop of *York*, the Primate of the *Northanbymbrian Kingdom*.

21d. Bib.
Cot. Cleo-
pat 1.4. &
Sentsh
Hist. ap-
pend.
p 352.
353.
Accordingly *Turstin* Arch-bishop of *York*, in the time of *H. 1st.* obtain’d Bulls from the Pope ; which in Confirmation of *Lanfranc’s* Cession, required the Bishops of *Scotland* to obey the Arch-bishop of *York*, as their Metropolitan.

This, as appears by the Letter of the King of *Scots*, which a Learn’d Prelate of our Church would

would set aside, they refus'd, to do, because of the *Perogative* of the See of *Canterbury*; insisting that *Lanfranc's* Cession, and Transferring them over to the other See, was in the absence of the *King* and People of *Scotland*: And therefore declaring that if the then Archbishop of *Canterbury* would support them with his Authority, they would to the utmost oppose the *Primacy* of the See of *York*.

But tho' they Disputed which of our Archbishops ought to be *Christ's Vicar* to them, that Letter from the King of the *Scots*, in the Name of himself and his People, shews that the Confession in the agreement with *H. 2.* that the Church of *Scotland* of Right, was, and us'd to be, Subject to the Church of *England*, is not to be look'd on as extorted by Duress.

In the Synods which were held under the Monarchs of *Britain*, Canons were made from time to time, as the exigencies of the Church were thought to require, of which I need not stay to give Instances:

But must observe that when *Lanfranc*, in the time of *W. 1.* enquir'd what was the ancient Manner of holding Synods among the *English*, he was inform'd that after the Clergy were Seated, there were to come in Men of good Conversation, the *Probi Homines*, or such as by Reason of an Unanimous Election, deserv'd, or ought to be present.

This, as was the Practice of those times, took in all the Members of the Parliamentary Council, and only the subject Matter and occasion of their Meeting distinguish'd Synods from Civil great Councils: to both there was a National Authority, which as it was exercis'd under

Vid.
Spelm.
Concil. in
Princip.
& Bis Cot.

Qui Electi
one Confu-
gali inter-
est merue
rint.

der one Head, and all parts of this *Island* were thus Embodied together, manifested their Acting as the Subjects of one and the same *Imperial Crown*. As this has appeared in relation to Ecclesiastical Matters, I shall make it no less plain in Civil.

C H A P. XXVII.

Shewing the Continuance of the British Common-Law, and that the Scots, and all Parts of this Island though they were indulged in particular Customs, were under Allegiance to, and Governed by the same Law, till within the Reign of H. II. and after.

THough Christianity was in these Islands, in the simplicity of the Gospel, long before the coming of *Austin* the Monk, yet the generality of the Writers since, having had a mean Opinion of that Religion, which was un-adorn'd with Pomp; and Worldly Greatness. I must leave it to them, who are Masters of the Rich Treasures in the *British Tongue*, to give a tolerable Account of the State of the Church here, before it was Dressed out for Shew.

I must agree, that there is more than Men are generally aware of, in the *Maxim*, no *Bishop*, no *King*; for I do believe, that as the Authority of the *Prince* has supported the *Sees*, the Metropolitcal Power generally strengthened with

with the *Legatine* from *Rome*, was for a long time a means the more effectually to unite a Body of disagreeing Members, under one *Temporal Head*.

But before this Authority brought along with it Disputes about the tything, *Mint*, *Annis-fee*, and *Cummin*; the artless Profession of True Religion as it united men in a Common Interest in *Spirituals*, made all upon the Island the more heartily unite against *Pagan Invaders*; and to maintain the better Correspondence, they chose Rulers in several distinct Communities, to be under one *Head*, or *General*; and whatever Clouds may seem to involve the times before King *Arthur*, from within his Reign at least, as the *Confessor's* Law shews, the whole Nation was under one Law, especially the *Fundamental*, which took in and concluded the Right of all Persons Interested within the Island, to meet in Person, or Representation, in the *Pole-mote* of all the Subjects of the *British Monarchy*.

In this sense, and not in relation to particular Customs, or Positive Laws in relation to Private Rights, is the Chief Justice *Fortescue* to be taken, who after he had received the well attested Story of *Brute's* Erecting a Kingdom here, and mentioned *Scotland's* being advanced to a *Regal State* from a *Dukedom* obeying *England*, says, This Kingdom has been ever Governed with the *same Customs*. *Fortescue p. 31. b. 33.*

Take this as spoken of the Rules of Government, and they may appear Invariable; and this may be extended further to what has obtained the name of the *Common Law* of the Kingdom.

I must

Hale.

I must take off my Pen from entering into a large Justification, of what Chief Justice *Forscne* has delivered with exquisite Judgment: Had not the Publick been Robbed of the most valuable *Ad S. S.* of that, and an other Chief Justice, it might have been presumption to have enter'd upon any Subject which they had illustrated.

I might shew at large the Uniformity of the Government, from within the *British times*, to the Prerogative of the Prince, the Jurisdiction of the Lords, and Inviolable Rights and Priviledges of the Commons; and how admirably the Constitution has tempered and ballanced one with the other: But as I have already shewn, that the *Federal Law* was so far from being brought in by *W. I.* that it was here in the *British times*; I shall give a short Schetch of the proofs, that the *Scots*, as well as the *English*, were Governed by the *British Laws*, and under Allegiance to them, from the earliest times, till their so ample recognitions in the Reigns of *H. II.* and *E. I.*

That by King *Arthur's Law*, all Princes, Peers, Military Tenents, and Free-holders, were to meet in the *Folemore*, or National Assembly, on the 1st. of *May*, we have the Authority of the *Confessor's Law*, and that shews, that as the Assembly was Compos'd of all with whom the Ballance of the Power of the Nation was, its Business extended to all the Interests of the Publick; and the chief was the preserving the Person of the *Monarch*, the Rights of the *Crown* of the *Kingdom*, and the Protection of all men, from the Insults and Ravages of Foreign Invaders.

Tho'

Though ordinarily in times of general Peace the *Assemblies* were to be on a fixed Day, they could not but be often prevented, and therefore, attending upon the Precept or Summons of the *Monarch* became a Duty, by virtue of the *Prerogative*, resulting from the nature of the *Supremacy*, if it had never been expressly delegated.

By virtue of this Law of King *Arthur*, which was as truly followed, if the *National Council* met at the time appointed by the *Monarch's* Summons, as if it had been upon the day fixed by the constitution of the *Island*, as the *Confessor's* Law assures us, was delivered from an Invasion of the *Danes*, which threatened Universal Ruin. Tho' the Authority of the *Confessor's* Law might be sufficient for this matter, I shall confirm it with one undeniable Instance.

Sir Henry Spelman in his Councils, mentions one of all *England*, met at *London*, the 26th of *May*, which was as near as possibly could be to the day fixed by the *British* Constitution: as a Charter passed in that Council, which does not stand upon *Inglulf's* single Authority, though that is very good, shews, this was held under *Egbert*, then Monarch of the whole *Island*: there were with *Withlase* King of the *Mercians*, who was the chief in Power under him, both the *Arch-Bishops*, the rest of the *Bishops* of *England*, and the *Great Men*.

This, as the Charter shews, was, when they took Council together against the *Danish* Pirates.

Let it not be said that the King of *Scotland* is not mentioned as present, since as it has appeared above, *Egbert* was Monarch of the whole *Island*.

Legis. Conf.
Ter. Greve
c. 35.

Spelm's
Council.
Vol. 1.
p. 116.

Ann. 833.

Island, and besides, there was no such Country as Scotland then, but Ireland.

Harding, speaking of the Assistance Egbert had against the Danes, and his Retreating from them at the first, says it was

"Till that they came to *Doncastre* full right,

"Where to him came the Kings and Baronage

"Of all England and Wales, with all their Might.

Of the
Common
Law. Polycronicon
f. 202.

The Author of the *Polycronicon* shews the Foundation of the Common Law to have been laid principally by *Dunwallo Molmutius*, whose Laws, he says, continued *satis celebres*, in sufficient Reputation, usq; ad tempus *VV. Cong.* Even to the Conqueror's time.

(a) Hist.
Brit. &
Angl. ed.
per Duff.
Gale, Vol. 1.
F. 553.
Hist.
Compendi-
osa de Regi-
bus Britan.

Ralph de Diceto Dean of *Paul's*, in King *John's* time, who, for matters of the greatest Antiquity cites *Brome*, an Author, as I take it, not now to be found, makes *Dunwallo* immediate Successor to *Cassibelaun*, King of the Britons, when *Julius Caesar* Visited this Island, which he was far from Subduing.

Dunwallo, (a) according to the Learned Dean of *Paul's*, was the Son of the King of *Cornwall*; Conquered Five Kings then, in *Britain*, and Established the Laws which are called the *Molmutian*.

Prid's In-
roduction.
P. 274.

In the Third Succession of British Kings, after *Dunwallo* was *Gutelin*, who, as *Prideaux* says, "was the more Famous for his Learned, and Prudent Wife *Marric*, from whom the Saxons had their Laws, *Marebene Log*, translated unto them by King *Alfred*.

The Author of the *Polycronicon*, speaking of the *Molmutian* and *Marcian* Laws, says, "These two Laws *Gildas* the Historian Translated from the British into Latin, and King *Alfred*, "after-

The
extra
Judgm
of W.
Crimes
fred's P

" afterwards from the *Latin* into the *Saxon*.

" These were called the *Merchenelaga*.

" *Alured* himself also added a Law written in

" *English*, which was called *West/saxenelaga*. Ac

" last, the *Danes* Ruling in this Land, a third Law

" sprung from them, which was called *Danelaga*;

" out of these King *Edward* the 3^d. Published

" one Law, which to this day is called the

" Laws of *Edward*.

Being no party in the Controversy between the Bishop of *Carlisle* and Dr. *Atterbury*, who are able Men in their way, I need not determine which is in the right in the Interpretation of *Laga*; I indeed should have thought that it had been impossible for a question to be raised upon it.

Vid. Bishop of Carlisle pref. to Scotch Hist. Libr.

I must observe, that the *Edward* mentioned in the *Polychronicon*, was the Third before the reputed Conquest; the first was the Son of *Alfred*, the second of *Edgar*.

The difference of the several Laws will appear to consist only in particular Customs, and those chiefly, if not wholly, in relation to Pains and Penalties. In the *Annals of Winchester*, 'tis said,

Leges Briton. Rex Aluredus transfulit in Angliam, quæ tunc dicebantur leges Regis Aluredi.

King *Alured* or *Alfred* Translated the Laws of the Britons into *English*, which were called King *Alured's* Laws.

Annales Winton. int. script. Angl. Sacr. F. 32. De An. 872.

The *Mirror of Justices* must needs be thought extracted from ancient *Pandects*, or Books of Judgments much more ancient than the time of *W. I.* unless we will believe the Names and Crimes of several Judges, Hanged in King *Alfred's* Reign a meer Fiction.

Mirror p. 2.
Les vieux
rolls des
trezors, &c.
p. 8.

The *Mirror* at the beginning refers to the Rolls of the King's Treasury, in searching which, he had been assisted by *Therai*, for finding out the Foundation and Original of the usages of England, given, or created by *Laws*.

There, after mention of the *Holy Scripture*, as the *Fundamental Rule* of our *Laws*, the Compiler of that Collection giving a reason for the Title, says,

Lequel summe jee
appellai *Mirror* aux
Justices, selonq, ceo
que jee trouvaies ver-
tues les substances embel-
lies, & puis le temps le
Roy *Arthur* uses per
Saints usages, accordant a
les rules avandist.

Which Summary I
call a *Mirror* to Justi-
ces, according to what
I find the Virtues the
Substances embellished,
and since the time of
King Arthur, used by
holy usages, according
to the Rules above-
said.

Where he lays the Foundation of our Ancient Law in *King Arthur's* time, which 'tis reasonable to believe, that he, and *Therai* found in that then greatest Repository of Records, the *Treasury* of the *Exchequer*.

As I observ'd before, Authors tell us, *Cnut* the *Dane*, in a National Assembly, agreed, that both *Danes* and others should be Governed according to *Edgar's* Laws. This was, as *Edgar* was the last before him, who gave Reputation to the use of the Ancient *British* Laws; but that these were as truly at the time when *Cnut* confirmed them, accounted the Laws of former Kings appears by *Windover*, an Author of undoubted Credit, who says,

The

" The *English* and *Danes* in a Colloquy Celebra-
 " ted at *Oxford*, were brought to an Agreement,
 " for the observing the Laws of *Edward* the 1st.
 " Upon which, those Laws by *Cnut's* desire
 " being Translated from the *English* into *Latin*,
 " they for their Equity are by the King Com-
 " manded to be observed, as well in *Denmark*
 " as in *England*.

Thus did the *English* Feudal, and other
 Laws spread in Foreign Parts, before the Con-
 fessor had taught them the *Normans*. Of these
 Ancient Laws; the Account given H. I. in
 that Digest, which has obtained the name
 of the Confessor's Laws, says,

" *Edward*, by the Counsel of his *Baron*, ex-
 " cited the Law, which had slept sixty eight
 " Years, repaired it excited, adorn'd it
 " confirmed it, and being confirmed, it
 " is called *King Edward's* Law; not that he
 " first Invented it, but when it had been laid
 " by, and wholly given up to oblivion,
 " from the Days of his Grand-Father, King
 " *Edgar*; *Edward* himself, because it was just
 " and honest, drew it out of a deep Abyss, and
 " caused it to be observed.

This is the Law which *William* the 1st. ex-
 pressly confirmed, the Maintaining which has
 generally in succeeding Reigns been part of
 the Coronation Oath. Now let us see whe-
 ther the Practice of these Laws was enforced
 among the *Picts* and *Scots* of *Albany*.

As I shew'd above from parts of his Laws,
 in affirmance of the Old *Saxon*, or rather, as
 has appeared, the *British* Laws, the *Scots* and
Picts of *Albany* were within his Government,
 and he was to take care, not only of the Peace,

Wendover
M. S. Bib.
Cor. de An.
1622. In
Colloquio
apud Oxon.
celebrato de
legibus E. 1.
tenendis
efficit sunt
concor-
des, &c.
Vid. Pref.
ad Custom-
er Norman-
dia.
Leges Ed.
Lomb. Arch.
E. 150. Es
Spelm.
Glos 115.
Lex.

but of Judgment and Justice, with relation to them, among the rest of the Subjects of his truly Imperial Crown.

And the full Forfeiture, which may well be supposed to be restrained to Capital Cases, was to be to him alone.

He further in Affirmance of the Common Law Enacts,

“ That all Free-men Affirm with Faith and Oath, bind themselves that within and without the whole Kingdom, which in former times was called the Kingdom of *Britain*, they will be Faithful to King *William* their Lord and King, with Him, preserve his Lands and Honours with all Fidelity, and Defend them against Enemies and Foreigners.

This was but King *Arthur*'s provision for the Allegiance of all Men within the Island, to the Imperial Crown of the Kingdom; how many soever might Reign within the *Island* with the Authority of Kings over them, to whom the Monarch left the immediate Government of any particular part.

The Law by which all were Governed was One, not only in relation to the principal Rights of the Kingdom, but the manner of private Men's enjoying their Estates, and standing to, and obtaining Justice, was the same in the main, with allowance for particular Customs, which obtained so long in several parts of the Kingdom, that they were of the same Force as if in a *Common Council* of the Kingdom it had been agreed, that such places should use such Customs.

The Feudal Law, which took in the principal part of the Common Law, as it has evidently appeared to have been here long before the time

time of *W. 1st*. the *Scots* agree to have prevail'd *Sir T. C.*
among them in the time of their *Malcolm the 2^d*. *p. 17.*
who Reign'd in King *Edgar's* time; and
finding *Wardship* among them at that time, their
Writers without the least colour ascribe the
Law for it, to their *Malcolm the 2^d*. of that
time.

As appears above, this was the very *Malcolm*,
who was one of *Edgar's* Barons, and King of
the *Cumbrians* before ever he was King of *Scot-*
land.

Besides what the Course of the Antient Histo-
ries lead to, it's express that the *Scots* and *Picts*
were under the *Danelaga*, and Govern'd by the
Crown of *England*.

" In an Account of the number of Provinces, *Bib. Cor.*
" Countries and Counties, which of right belong, *Claud. D.*
" and without doubt appertain to the Crown f. 1. 2.
" and Dignity of *Britain*, *Albany*, as I have
" observ'd above, is one of the number.

Then distinguishing the several Laws or Cu-
stoms, by which the several parts were govern'd,
'tis added,

Danelage pertinent 5
Provincie cum omnibus
suis Appendiciis scil. Deir-
ra, quæ nunc vocatur
Northumberland, scil.
tot-ter. quæ est inter mag-
num fluvium Humbri &
Tede fluvium et ultra
usq; ad flumen Frith,
scil. Looia, & Galweia,
& Albania tota, quæ
nunc Scotia vocatur, &

To *Danelage* there
belong 5 Provinces,
with all their Appen-
dages, viz *Deira* which
now is call'd *Northum-*
berland, viz. all the Land
which is between the
great River *Twede*, and
the River *Frith*, viz.
Lodeny or *Lothian*, *Gal-*
loway and all *Albany*,
which now is call'd

Moroina, usq; ad Norwegiam scil. Katherinisia, Orkney, Enchegal & Man, & Orcas, & Gurth, & cæteræ Insulæ occidental. Oceani circa Norwegiam, & Daciam; & Fyftonshire, quod Latine dicitur quindecim Comitatus, scil. Everwykshire, &c.

Scotland and Murray Land, as far as Norway and Denmark, viz. Katherinisia, Orkney, Enchegal, and Man, and Orc, and Gurth, and the rest of the Isles of the Western Ocean about Norway and Denmark; and Fyftonshire, which in Latin is call'd the 15 Counties, to wit, Yorkshire, &c.

Here 'tis observable,

1. That agreeably to what has appear'd all along, the *Lothians* were accounted no part of *Albany*.

2. This agrees with an other Authority cited above, that neither was *Murray Land*.

3: That *Northumberland* is there shewn to be the Land possess'd by all Persons on the North of *Humber*.

4. All those Northern parts of the *British Island* were under the *Danelege*, that part of the common Law of *England*, at the time of that Account, which seems cotaneous with the Confessor's Laws, a transcript of which is in the same *M.S.* and among them, our *Glanvil*.

That till *H. 2d's* time, and since, the Laws of *England* were the rule of Government in *Scotl.* will be very evident if there be positive proof that the first Body of Laws which they receiv'd was the Book which was compil'd by *H. 2d's* Chief Justice *Glanvil*; and this was taken as a Rule for the Judgments there, for a considerable time after

after the Reign of H. 2. Now as to this Matter, their *James* the 7th. our first, whom all must agree to have been a Man throughly Learn'd, and Conversant with all the Antiquities which the *Scotch* had; observing the Uniformity of Government between *England*, and *Scotland*, assures his *English* Parliament, that the *Scots* have no common Law, but that which is call'd *Jus Regis*; that *James* the 1st. bred here in *England*, brought the Laws thither in a written Hand.

Inter Op.
Regis Jac.
Speech in
Parl.
An. 1607.

He shews further, that the civil Law which has obtain'd much among them, "was brought in by *James* the 5th. out of *France*, "yet not to Govern absolutely by the Civil Law, as in *France*. He adds,

"The Civil Law is admitted in no other Cases, but to supply such Cases wherein the Municipal Law is defective.

This *James* the 1st. did not Reign there till after our *Rich.* 2. Before that they were it seems uncertain what their Municipal Law was, till *James* the 1st. brought a Body of Laws out of *England*: if this was their *Regiam Majestatem*, or *jus Regis*, which according to King *James*, was their Common Law, or they had none, but as they were to receive it from time to time from *England*; and if this *Regiam Majestatem* appear to be our *Glanvil*, then it will appear that the Law of *England*, receiv'd from hence is the Common Law of *Scotland*, Quod erat demonstrandum.

Now to prove that this was the Common Law of *Scotland*, I may join our Learn'd Prelate, who is such an Admirer of Sir T. Craig, and

and Sir Thomas himself, to put the Matter past Dispute.

Scotch Hist.
Libr.
p. 257.

Our Bishops says,
“ The first Authentic Body of Laws of the
“ Kingdom of Scotland, (if even that may be
“ justly esteem'd so) is their *Regiam Majestatem*,
“ which has it's Name from the two first Words
“ in it, as *Glanvil's* Book might have been call'd
Regiam potestatem.

p. 258.

Then he brings in Sir T. C. as objecting a-
gainst that Body of their Laws, that the intent
of that Author could never be to profit their
People, or prescribe Laws to them.

*Autor enim istius Libr.
fuit Ranulphus de Glan-
villa, qui tractatum de
Legibus & consuet. Ang-
lie, Regnante H. 2. edidit.*

For the Author of
that Book was *Ranulph
de Glanvil*, who pub-
lish'd a Treatise of the
Laws of England in the
Reign of H. 2.

And in an other place as our *Prelate* observes,
“ Sir T. C. shews that several *English Customs*
“ are in these Books alledg'd, as part of the known
“ Laws of Scotland. Which he says never had
footing in that Nation.

Against which his Lordship produces Sir T. C.
himself, with an *Epigram* recommending
it as Authentic. But what puts the Matter out
of all Dispute is; In a Commission of K. Charles
the 1st. with Consent of the Estates of *Parlia-
ment*, for the Composing a new Body of the
Laws of Scotland, particular mention is made of
the Book entitl'd *Regiam Majestatem*, which
contains one Record of the Ancient Laws, and Customs,
observ'd with in the said Kingdom.

“ It's

" It's Authority is expressly asserted by some Acts of Parliament, and by others we are refer'd to it, for the manner of Process in Trespasses, Effoins, Affizes, or Enquests, &c.

Thus as it has appear'd that till *H. 2^d*'s. time they were under the Law, as well as King and Crown of *England*, so they were long after, and yet continue in the Main.

And as the Laws of the Confessor, and *W. 1.* in Concurrence with the History of all pass'd times, shew that the *Scots* were in a true Sense liege Subjects of the Crown of *England*; they have Recogniz'd this not only by their *Homages* and Oaths of *Allegiance*, but in submitting to it's Laws.

CHAP.

C H A P. XXVIII.

A Confirmation from the Scotch Chronicle, of the Proof that Scotland has been Govern'd by the Laws of England. Of the use of this in refuting Sir George Macchenzie's Arguments for the absolute Power of the Kings of Scotland. Of the necessity of History to help in determining Points of Law, particularly in Relation to Descents of Inheritances. Wherein Calvin's Case is consider'd. And Sir Thomas Craig's notion of Aliens and Denziens refuted.

IN further Confirmation of the Proofs above, that the Scots were under the Laws of England, before and after H. 2d's. Reign, I may observe that in the 28th. of H. 3. a Charter pass'd at the Importunity of the Baronage of the Realm, wherein it was declar'd to be the Right of this Kingdom to have the Chief Justice chose in Parliament.

If therefore it shall appear that the Chief Justice of England, was Chief Justice of Scotland, no Man surely will then deny but Scotland was truly under the Allegiance of the Crown of England.

Wh-

Whether it were thus or no, I appeal to the Scotch Register of Mailros, of the Year 1221, which was the 5th. of H. 3. in that King's Minority, when the States of the Kingdom, being Unanimous, preserv'd to the Crown the quiet Possession of its ancient Right of Superiority over Scot land.

That thus it was, appears by this passage in the Register.

Eodem anno tradita Domina Margarita filia Recordationis Wil- li. Regis Scotiæ, & Soror Domini Alexandri Regis Domino Huberto de Burc, Justiciario Angliæ & Scotiæ, per Consensum utriusq; Regis Angli. scil. & Scotiæ, & Consilium Magnatum utriusq; Regni.

The same Year Lady Margaret, the Daughter of William of Pious Memory, King of Scotland, and Sister of the Lord King Alexander, was given in Marriage to Lord de Burc, to wit, the Chief Justice of England and Scotland, by the Consent of both Kings; that is to say, of England and Scotland, and the Counsel of the Great Men of both Kingdoms.

Chron. de Mailros. An. 1221. 5. H. 3.

It appears that Hubert being Chief Justice of England, had Scotland, as annexed to his Office; for he manifestly was Chief Justice of both Kingdoms before this Parliament, in which the Match was agreed.

And farther the Daughter of H. 3d's Homager was not Married without the Consent of him and his Great Council.

This

*Jus Regi-
um.* p. 68.

This being of the time of *Alexander the 2.* I cannot pass by the insincerity of Sir George *Machenzey*, who among their Kings, who as he pretends made *Laws without any Consent* Names *Alexander the 2.* and *David the 1st.* and *2d.* in whose *Laws* he affirms there is not so much as mention made of the *Nobility*, or the *Parliament*, in the very beginning of the *Parliaments*.

And yet he could not but know that their *Laws Printed by Skene* manifest the contrary.

The attending to what I have shewn of the force of the *Law of England in Scotland*, effectually removes all colour from the pretence of an absolute Power in the Kings of *Scotland*.

Sir G. W.
*Jus Regi-
um.* p. 36.

" Thus when he says, in the Preface to our *Book of Law* call'd *Regiam Majestatem*; It is acknowledg'd that the King has no Superior except the Creator of Heaven and Earth, who governs all.

This is easily answer'd, by observing what is confess'd by *Sir T. C.* and will be evident to any body who considers their *Regiam Majestatem*, that this was our *Glanvil*, and the *Majesty* of the King of *England*, which tho' Superior to *Scotland*, by the undoubted Constitution of the *English Monarchy* was always limited by *Laws*.

p. 51.

And if it be a *Maxim* in their Law, that " no Man Possess any thing but by the King's Authority,

p. 52.

" rity, and there be truth in what he cites of the Law of their King *Malcolm Canmore*, that the King Distributed the whole Land of *Scotland* to his Men; The King, according to the truth of Story, must have been the *British*, or *English* Monarch. This rightly apply'd will

root

root up every supposed ground for the Absolute Power of the Kings of *Scotland*: if it be from the Patriarchal Power, going along with a Series of Successions in the right Line from their imaginary first King, without any Election of the People; Prior to that fancied Right, the Investiture from the Crown of *England*, and permission for their Kings in such Successions, while they Acted as became Homagers; but especially new Grants rather than bare Investitures after they had Forfeited, demonstratively shew, that whatever Pretence other Kings might have to an Absolute Power as God's Kings, without any Authority from the People, or Restrained by them, Kings of *Scotland* cannot have it, being the Crown of *England's* Kings.

As the consideration of our *English* Laws and History, explains and limits the Right of the Crown, it may further appear that the chief Points of Law, in relation to the Union propos'd, and the Rights of the Subjects to Inheritances, cannot receive any tolerable Solution, without some knowledge in History.

After the Accession of *James*, King of *Scotland*, to the Crown of *England*, 'tis well known, he very much labour'd an Union of both Kingdoms in a true sense, by making them one; and if either side had attended to the Truth of Fact, or the obvious Consequences of it, the Controversie had not been so perplex'd as it has been.

The Scots, as appears above, went upon the true topic, if they had taken due means to preserve their Privilege; when to promote the Succession of their King to the Crown of *England*, They urged that they were not *Aliens*, but *Denizens*:

Dyer.
14 Eliz.
F. 304.
pl. 51.

Vaughan's Rep.
F. 28. in
the Case
of Crow.
and Ram-
sey. 21 &
22 Car. 2.

Calvin's
Case.

nizens: and this they had from our *English Lawyers*, which was not only an extrajudicial Opinion, but a solemn resolution of the *Judges* of both *Benches*, in the 14th. of *Queen Elizabeth*, at a time when they could not be thought to give such a Judgment out of any Byass towards the *Scotch Succession*; it being while they might reasonably expect that *Queen Elizabeth* would have Issue of her own, or agree to Settle the *Crown* by Act of *Parliament*. The L. Chief Justice *Vaughan*, to whose Authority I must needs pay great Deference, and yet take leave to shew his Mistake in relation to the *Homage*, agrees, that the King of *Scotland's* holding his Kingdom as *Homager* and *Liege-man* to the King of *England*, is the reason of the Case, 14 *Eliz.* in Lord *Dyer*, where " a *Scotchman* being Arraigned for a Rape of a Girl under seven years of Age, and praying his Tryal *per medietatem lingue*, because he was a *Scotch-man*, it was denied him by the Opinion of the Judges of both Benches, for that among other reasons, a *Scot* was never accounted an Alien here, but rather a Subject. So are the Words of the Book. After this, when a *Scotch-man* was King of *England*, and no Man could hope to make his Court by holding, that the *Crown* of *Scotland* was under the *Crown* of *England*, came on the Question, Whether one born in *Scotland* after their King came to be King of *England*, might Inherit Lands in *England*? The Learned Men of the House of Commons, who foresaw that as Matters then stood, this would bring in an Inundation of *Scots*, nor was any sufficient recompence for this to be then expected, strenuously opposed it, as the *Scots* were Men of another

ther Allegiance, that is, though they paid Allegiance to the person who was King of England, they did it to him only as King of Scotland. This was then the Fact, and the Right of the Crown of England was waved, in Complement to the King, from whom they then expected Glorious Days.

How much soever they have been condemned, who distinguish between the Natural and Politick Capacity of the King; 'tis plain, the Judges in their Resolution of Calvin's Case, went upon supposing Allegiance due to the Person of the King, divided from the consideration of his being Seiz'd of the Crown of the Kingdom, and the Rights belonging to it.

If we do not separate what the Law has joyn'd so closely together, that they cannot be parted, while the person is King, in the Eye of Law, till according to the Confessor's Law, *nec nomen Regis in eo constabit*, not so much as the name of King shall remain in him; we may easily observe how inconclusive the Authorities are which were relied on, for the Resolution in Calvin's Case: and yet the Judgment happened to be right.

The Case of Copledike, which, as Chief-Justice Coke said, Over ruled Calvin's Case, Calvin's Case f. 10. was no more than that in the time of Edward the 1st, the Chief Justice disallowed the Plea, that the Plaintiff was not to be Answered, being a French man, and not *la foi*, at the Faith of England. Upon which,

which the Council pleaded that he was neither of the *Allegiance* of *England*, nor at the *Faith* of the *King*.

Here 'tis obvious.

1. That both the one and the other was needful to be mention'd in pleading.

2. If they are not look'd on as inseparable, but the one to be divided from the other; then, tho' a *Denizen* must be *faithful* to the *King*, his *Allegiance* is to the *Kingdom*, that is, to the *Crown* of the *Kingdom*.

3. As this divided Sense is absurd, 'tis Manifest that *Allegiance* is due to the *King* by reason of the *Crown* of the *Kingdom*.

Vaughan's
Reports,
£. 286.

The other Cases rely'd on, as Chief Justice Vaughan observes, are, that the *King* of *England*'s Subjects of *Normandy*, *Britain*, *Aquitaine*, *Anjou*, *Gascoign*, *Guien*, *Calais*, *Fersey*, and *Guernsey*, *Isle of Man*, *Berwic*, and other parts of *Scotland*, *Ireland*, *Tourney*, &c. (most of them Dominions belonging to the *Crown* of *England*) were never accounted *Aliens*.

And if so, Chief Justice Vaughan ask'd the Question. "What Inference could be made from the Resolution of Calvin's Case? He added that because the Kings Natural-born Subjects of Dominions belonging to the Crown of England as these did, were no *Aliens* of England, therefore that Subjects of a Dominion

"mini

"minion not belonging to the *Crown*, as the
 " *Ponstati* of *Scotland* are, should be no *A-*
 " *liens* in *England*, *Non sequitur*.

Here this great Man did not attend, to the
 Consequence of his own admitting, that some
 of these did not belong to the *Crown* of *Eng-*
land: for if any of them did not, then there's
 no doubt but the instances of such were di-
 rectly to the question in *Calvin's* case; tho' in
 truth every one of them became annexed to
 the *Crown*. Neither did his *Lordship* attend to
 the Resolution 14°. *Eliz.* shewing that the
 Question was the same in relation to *Scot-*
land, being of the *Allegiance* of the *Crown* of
England, as Places suppos'd to have belong'd
 only to the *King*.

Nor yet did he attend to the Case of the *Dutchy* of *Lancaster*, 4°. of the *Queen*, whereby it appears that not only then, but 1°. of *H. 4.* it was held that the private Inheritance of the *King*, upon his coming to the *Crown*, was so annex'd to it, that it could not be sever'd from it without Act of Parliament. And whatever Land, the *King* Purchases, he is Seiz'd of it *jure coronæ*, in his Royal Politic capacity, not in his *Natural*.

plowden.
Case of the
Dutchy of
Lancaster.

17th.
 f. 16
Anno 150.

This answers all the Instances of a distinction of the Capacities that can be given: and seemingly most full, will appear to have been mis-understood, both by the Judges, 7°. *Jac. 2.* and by one of no less Judgment in a Book publish'd by him 9°. *Eliz.*

Stamfords
Expos. of
the Kings
Prerogat.
An. 1567.

p. 6.

The Stat. *de Prerogativa Regis*, is Printed as of the 17th. of Edward the 2^d. but, Stamford observes that in the 15th. of Edward 4th. Lutleton doubted of the time of making the Statute; yet he says, "without doubt it was made in King Edward the 2^d's. Reign," and that plainly appears by these words, "*Et illa voluntas tempore Regis H. patris Regis E. assecurari consuevit*, &c. which words, says he, were not written in King Edward the 1st's. days, for then the words had been *Patri nostri*.

But I take this to be an argument that they were of the time of E. 1. for otherwise, *Patri Nostri*, would have been added to Edward. And besides, not to heap instances in the Preface to the Statute of Westminster the 1st. the 3^d. E. 1st. 'tis said *Ceux sont les establisments le Roy Edward Fitz le Roy Henry*.

Having thus ascertain'd the Reign, in which the Statute *De Prerog. Regis* was made, I shall transcribe the 12th Chapter, which has been apply'd to this Question.

Stat. de
Prerog.
Regis Cap.
2.

"The King shall have the Escheats of the Lands of Normans, to whose Fee soever they belong, saving the Service appertaining to the Chief Lords of the same Fee.

"And this also is to be understood where an Inheritance descendeth to any that
is

" is Born in parts beyond the Sea, whose An-
 " cestors were, from the time of *King John*,
 " under the *Allegiance* of the *Kings of France*,
 " and not of the *Kings of England*, as lately it
 " happen'd by the *Barony of Monmouth*, af-
 " ter the Death of *John of Monmouth*, whose
 " Heirs were of *Britain*, and other places.
 " *K Henry* by the foresaid occasion recover'd
 " many *Escheats of Normans Lands* out of the
 " Fees of other Men, and gave them to be hol-
 " den of the *Chief Lords* of the *Fee* by *Services*
 " due and accusom'd thereto.

That this was true in fact, may be seen by
 many Records in the *Exchequer*, of *Escheats*
 of Lands of *Normans*, and others.

The words of the Law and the Instances
 given of it's having obtain'd are so plain,
 that one would wonder so Learn'd and judi-
 cious a Man, as Judge *Stamford*, should mistake
 them, as he plainly did in saying,

" By this Branch it should appear, that
 " at this time, Men of *Normandy*, *Gascoign*,
 " *Anjou* and *Britain* were Inheritable with-
 " in this Realm as well as *English-men*, be-
 " cause that they were sometime Subject
 " unto the *Kings of England*, and under
 " their *Dominion* till *King John's* Time, and
 " yet after His Time, those Men (saving
 " such, whose Lands were taken away for
 " Treason) were still Inheritable with-
 " in this Realm, till the making this Sta-
 " tute.

Stamf. de
Prerog.
p. 392.

This

This Interpretation of that very great Lawyer,

1. Is contrary to what himself held at the beginning, that the whole Statute of the King's Prerogative doth *but confirm and declare what was the Common-Law before.*

2. 'Tis directly contrary to that part of the Statute on which he here Comments, shewing that from King *John's* time, all in those parts, who withdrew from the Allegiance due to the King of *England*, and Submitted to the King of *France*, Forfeited as Traitors; and therefore, whoever was immediate Lord of the *Fee*, their Lands Escheated to the *Crown*.

3. The Act shews, That before the Making and Publishing this Declaration of the Law, the Crown, in the Reign of *Henry* the 3^d. took the Advantage of the Forfeiture.

4. That before that Traiterous Revolt *Normandy*, and those other Parts were held to be annexed to the Crown of *England*; for otherwise People there could not have been Traitors in Revolting.

5. If after that they are to be accounted not so properly Traitors as *Aliens*, must be as they are *Denizens* of another Kingdom; and consequently, their not be

ing *Aliens* consisted in being *Denizens* of England.

'Tis plain, according to the known Rule in Law, of Inheritances Vested in the King of England; *Normandy*, and other parts beyond the Sea, though they first came by other Right or Means than the Crown did, were annexed to it by operation of Law.

As the Lord Coke rightly observes, " All ^{1 Inst. F.} the Lands and Possessions whereof the King is Seized, *jure coronæ*, attend upon, and follow the Crown; and therefore to whomsoever the Crown Descends, those Lands and Possessions Descend also; for the Crown, and the Lands, whereof the King is Seized *jure Coronæ*, are *concomitantia*.

That in the Judgment of all our *Parliaments* and *Lawyers*, from the time that *William the 1st.* was King of England, to *John's* losing *Normandy*, that was accounted an Appendage to the Crown of England, is manifest, not only by the allowing persons born there to be *Denizens*, though the *Dukedom*, according to the Right of Proximity, and possession for some time, was not in the King of England; but the *English Nation's* constant Asserting the Title of their Kings against Duke Robert and his Heirs.

If the Statute of the King's Prerogative, Declaratory of the Common-Law in this Matter, had been duly attended to it would have shewn the plain ground of the Priviledges to which the *Postnati* in the time of J. 1. were Entitled, and why this could not extend to them who were Born before he had the Crown of England.

At first View, without searching deeper it might seem as if the Right to the Priviledge arose from being Born while the Homage of the Kingdom of Scotland was Suspended, the *Homager* being the only person who could take it, and because of an Inability to do Homage to himself, it could not in the Eye of Law be withheld, or denied, or rather as the Fee was thereby consolidated. Yet upon another Account, not observ'd in Calvin's Case, nor elsewhere that I remember; it may be evident that Men Born in Scotland, for some Years after King James came to the Crown of England, neither were, nor could be *Denizens* of England.

That they were not, either according to the Common-Law of England, declared by the Statute of the King's Prerogative, nor even in the judgment of King James the 1st. and his Parliament in the Fourth of his Reign, appears by the Act, for the utter Abolition of Hostility, and the Dependence thereof, between England and Scotland.

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By that Act, several Laws made in the Reigns of R. 2, H. 5, and 6. and other English Monarchs importing the continuance of a State of Hostility are repeal'd, among the rest an Act 7 H. 7, which is an effectual answer to Sir Thomas Craig's Arguments, that the Scots, tho' they continued Hostilities, were in the Eye of our Law accounted *Denizens*, for it had provided that all Scots not made *Denizens*, should depart this Kingdom within 40 Days after Proclamation.

The Act repealing that Statute 7 H. 7. and others, did it, seeing all Enmity and Hostility of former times between the two Kingdoms and People, was happily taken away, and was under the Government of his Majesty as under one Parent and Head turned into Fraternity or Brotherly Friendship. Yet 'tis plain they neither thought King James's Accession to the English Throne, of it self made void the former Laws, nor that the Hostile State, was absolutely taken away even by that Statute.

For it was but *provisional*, and tho' several particulars were Enacted absolutely, it was provided nevertheless, that "none of the Articles Branches or Clauses abovesaid should take effect, until several Acts of Parliament of the Realm of Scotland should be repeal'd.

Among others one, making it Treason to remain in England, without Licence of the King of Scots; another of the like Penalty for making assurance for taking protection from the English, for Lands, or Goods; another requiring all Men to be ready for defence against England.

And what is very remarkable, an Act enjoining the Wardens to put in a Bill, the Names of all English men that occupy Land in Scotland, and seek redress according to the Treaties.

Where 'tis Evident, that without particular provision, *Englishmen* were not counted inheritable to Lands in *Scotland*.

Whether all those Laws, or any of them, were repeal'd in *Scotland*, before the Resolution in *Calvin's Case*, was so far from appearing to the Judges then, that they never enquired into it; and yet all must agree, that the *Scots* could not be entitled to the Privilege of *Denizens*, till those Laws which kept them out of the Protection of the *Crown of England*, were repeal'd.

If that *Parliament* had any share of the new light which the Judges had 7^o of that *King*, they must have held the State of Hostility to have so far ceas'd, by reason of the *Allegiance* which the People of both Nations, ow'd to the Person of *King James*, that all the Laws which kept them at any distance, fell of themselves for want of subject Matter upon which they could Work.

'Tis certain that till those Laws which are mentioned in that *Statute* were repeal'd, the *Scots*, tho', they ow'd *Allegiance* to the *Crown* of the *Kingdom*, were no more Entitled to the privilege of *Denizens*, than the People of *Normandy*, who had put themselves under the *French King's* Protection.

25. E. 3. The Statute 25 E. 3. Declaring who shall be accounted *Aliens*, and who *Denizens*, speaks of some Persons born beyond the Sea, out of the *Ligeance* of *England*, who are thereby enabled to enjoy Inheritances, after the Death of their Ancestors, in all Parts within the *Ligeance* of *England*, as well as those that should be born within the same *Ligeance*: and enables all others which should be born without the *Ligeance* of the *King*, whose Parents should be at the Faith and *Ligeance* of

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of the King " of *England*, so that the Mothers
 " pass the Sea by the Licence and Wills, of their
 " Husbands.

Whereby 'tis manifest that the *Ligeance* of
England, and the *Ligeance* of the King of *England*,
 are one and the same, without any difference but
 in Phrase, being in nature the same individual
 Allegiance.

The Lord Chief Justice Vaughan, who was of
 too great discernment to swallow all that pass'd
 for Reasons, upon which the Resolutions in *Cal-*
vin's Case seems to have been grounded, says,

" The adequate reason being found out why *Vaughan's*
 " the *Postnati* are not *Aliens*, will determine the *Rep. F.*
 " point which was in question before him; this 286.
 " was of an Act of Parliament in *Ireland*, Na- *Craw. v.*
 " turalizing one born in *Scotland*, before King *Kemsey.*
 " *James's* coming to the Crown of *England*.

That of the *Postnati* he says, was not be-
 cause they were natural Subjects to him that was
 King of *England*; for then the *Antenati* of *Scot-*
land would be no *Aliens*, they being Natural
 Subjects to him that is King of *England*, as well
 as the *Postnati*. No doubt but this would follow,
 if being a *Denizen* born, consisted barely in being
 born Subject to the King, without regard to the
 Crown of the Kingdom: and will go farther than
 the great Man could allow it, in consistency with
 the Arguments in *Calvin's Case*; which happened
 to be a right conclusion tho' the Premises did
 not Warrant it. His Lordship, adds,

2. " It was not because they were *Natural Sub-*
 " *jects* of Dominions belonging to the Crown of
 " *England*; for then the *Postnati* would be *Aliens*
 " in *England*, for they are not Subjects of a Do-
 " minion belonging to the Crown of *England*.

Fol. 279.

Before which he had said to the same purpose,
 " a Subject born in any Dominion belonging to
 " the Crown of England, is inheritable in Eng-
 " land, as well as native English-men, so the na-
 " tural born Subjects of Ireland, Guernsey, Jersey,
 " Herwick, and all the English Plantations; inherit
 " but, the specifick Reason of their Inheriting
 " in England, is not because they are born in
 " Dominions belonging to the Crown of England;
 " for if so none could inherit who wanted that,
 " and then the *Postnati* of Scotland should not
 " inherit, for Scotland is not a Dominion be-
 " longing to the Crown of England but to the
 " King of England.

Fol. 279.

286.

3. Both there and elsewhere he concludes; " It
 " remains then the reason can be no other but be-
 " cause they were born under the same *Ligeance*
 " with the Subjects of England: which, says he,
 " is the direct Reason of that Resolution in Cal-
 " win's Case.

But this is either a distinction without a dif-
 ference, or rather nothing at all; but owning
 that it was only so resolv'd, because it answer'd
 the present occasion.

For he confesses that upon the reason then gi-
 ven, it labours with innumerable difficulties whe-
 ther you make the *Allegiance* to the King alone,
 or to the Kingdom: and therefore to shew that it
 was a judgment without reason, cuts the Gordian
 knot, and says, they must be born under the same
Allegiance with the People of England: but whe-
 ther that was to the King, or Kingdom, or both,
 is left in the Clouds.

Chief Justice *Vaughan* says,

Fol. 28.

" The time of Birth is chiefly to be considered:
 " for he cannot be a Subject born of one Kingdom,
 that

" that was born under *Ligeance* of a *King* of an
 " other *Kingdom*, albeit afterwards one *Kingdom*
 " descended to the *King* of the other.

This is not true unless explained, and limited to two *independent Kingdoms*: for the *Scots*, as other *dependent Kingdoms*, have been always in right under a *double Allegiance*.

Then take it as meant of two *independent Kingdoms*; and besides that it goes upon begging the question, as if the dependency of *Scotland* was determined; it makes nothing to the point then in dispute: being no more in effect, than that a Man can't be born in two distinct *independent Kingdoms*, and consequently can be a *Natural born Subject* of but one of them. But if notwithstanding the Descent of one to the *King* of the other, the *Kingdoms* continue distinct and *independent*; what shadow of Reason has been assigned why they who were born in one of them, after the descent of the other to their *King*, should be *Denizens* in that other, by Virtue of that *Accession* to their *King*.

If the *Kingdoms* and *Laws*, remain entirely distinct, so must the *Privileges*.

That extraordinary acute *Chief Justice* shew'd himself sensible, that his Predecessors were far from Arguing with any strength in *Calvin's Case*: yet as he govern'd himself by their extrajudicial opinion, that they who were born before *King James* had the Crown of *England*, were *Aliens*, without attending to the true Reason appearing by the Statute of the *King's Prerogative*; he was obliged to hold that the Homage for the *Kingdom* was determin'd; tho', as has appeared, the right of Homage continu'd, and yet the Pri-

villeg arising upon the due performance of it was suspended.

As the resolution in *Dyer* is Express, that the *Homage* continued; the right of it, is so far from being prejudiced by the Resolution in *Calvin's Case*, that it might rather seem the only true Reason for the Judgment, allowing the Privilege of *Denizens* to all who were born in *Scotland* after the King, who was an *Homager* to the *Crown of England*, obtained the imperial Crown,

Yet in truth there was a more weighty Reason upon the Rule of Law, contain'd in the Statute of the *King's Prerogative*: that of what ever Inheritance King *James* was seiz'd upon being *King of England*, he was seiz'd in the Right of the *Crown of England*; and, thereby, as soon as the State of War between *England* and *Scotland*, was remov'd by Acts of the respective Parliaments, all who were born in *Scotland* from that time were *Denizens of England*.

Thus the Resolution in *Calvin's Case*, if the *Scots* had repeal'd their Hostile Statutes, happened to be right, otherwise not.

Crow and *Ramsay's Case*, which occasion'd *Chief Justice Vaughan's* Enquiry into the Grounds of the Judgment in *Calvin's Case*, was of a Naturalization in *Ireland*, of one born in *Scotland*, before *King James* came to the *Crown of England*.

One would wonder that a Court compos'd of so Learned Judges, should for any time be divided upon so plain a Point, as that a Member of *England* cannot give the Privilege of *English Birth* to themselves, who had it no otherwise than by such Gift.

Afterwards judgment was given that such Na-

Vid. Vaughan's
Case fol.
301.

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fol. 10.

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Naturalization could not extend the Privilege farther than *Ireland*.

This is one Resolution contrary to the Supposal of the Judges 7 J. 1. as if the Privilege of Birth followed the *Allegiance* due to the Natural Person of the King.

If it had, the King's concurring to an Act of Naturalization in *Ireland*, would have given the Privilege throughout all places within his *Allegiance*.

A few Years before the Judgment in the Case of *Craw* and *Ramsay*, there was a Case in the Exchequer-Chamber, of a Descent between Brothers born in *Scotland*, before King *James* came to the *English Throne*, and Naturaliz'd by Act of Parliament in *England*. One would think this could have rais'd no dispute among Learned Men: yet it was matter of solemn Argument before it was determin'd, that the Brothers Naturaliz'd were inheritable to one another.

I mention not these Cases as if the Right of the Kingdom could be concluded by Judgments in *Westminster-Hall*, if they were against the Right of the *Homage*, as they were not; but to shew that our Learned Men need not have been so perplex'd in their Notions, if they had follow'd the Divine Rule to stand upon the *Ancient Ways*.

It must be agreed, that as early as the Reign of E. 4. there have been Acts of Parliament for Naturalizing Men born in *Scotland*; which not only shew, that tho' they were of Right within the Allegiance of *England*, they could not have the Privilege, for want of some necessary Qualification; but that the Allegiance was due to the Crown of the Kingdom, not barely to the Natural Person of the King: for otherwise the King might

might have capacitated them without an Act of Parliament.

And farther, it shews that it was not enough to come to the Faith of the King, while he was of a *Kingdom*, which withdrew its Allegiance: For it being of the *Faith* of the King, had been enough; *local Allegiance*, and actually taking the Oath to the King, with Letters Patent of Denization, would give the Privilege of English Birth.

1 Inst. F.
S. 2. and
129. 2.

But notwithstanding such Letters Patent to a *Scotch* Man here, who had taken the Oath of *Allegiance*, he continued an *Alien* as to his Birth, and in regard to the Inheritance of any Ancestors. He had indeed a new Capacity: whereby the King gave away no Property, or Right of any Body but himself and his Successors.

Since the Right of *English Birth* could not be given but by Act of *Parliament*, in which the Consent of every Person in the Kingdom is involv'd; 'Tis evident, that the *Judges* in their Arguments inducing the Resolution in *Calvin's* Case, unwarrantably separated the Natural Person of the King, from the Politic; from whence the regal Authority, or Crown of the Kingdom is inseparable.

Sir *Thomas Craig*, who seem'd to think his Readers would not have Judgment to discern, how his chief Arguments to prove that *J. I.* before he was admitted to the Crown of *England*, had an indefeizable Right, make against the Independency of a Crown, all whose Subjects he contends to be Denizens, that is, in truth, within the Allegiance of *England*; argues, that they were so reputed at the making of the Statute 25 *E. 3.* being known to be then within the Power of *England*,

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England. But is not aware of the *Maxim*, that the reason of the Law ceasing, the Law ceases.

Nor is there any manner of consequence, that because the *Scots* were Denizens, while they kept to the Duty of their Allegiance, they continued so, notwithstanding a Forfeiture of the Privilege.

Tho' he contends that no Man was accounted an Alien within the meaning of the Statute 25 E. III. who was not born beyond the Seas, and at that time nobody within the Island of *Britain* might be within the reach of it, as the whole *Island* paid Subjection to King *Edward* III. yet he allows the Definition of a Man of Foreign Birth to be.

"One who is born out of the Bounds of the Territory, or Jurisdiction of any Sovereign Prince. *Of the Succession.* Fol. 252.

One while, he not being acquainted with the Statute of the King's Prerogative, says,

"Should I be Contentious, or Stiff, I might affirm that there is no such Law, or Statute, by which Foreigners, or those born out of the Kingdom, are excluded from the Succession of their Inheritance that belongs to them in *England*. Fol. 258.

Indeed if it belongs to them, no Law excludes them from it; but his meaning must be, that no Law makes them less capable of Inheriting, than Natural born Subjects: Yet this is but one of his usual Inconsistencies, for not long before he had said,

"They are in a great Error who think, that that Law concerning Foreign Birth is peculiar to *England*, and that it proceeds from their Municipal Law. For there is scarce any Country in *Europe*, Fol. 253.

Europe, which has not the same Law, &c. The reason of that Law flows from the Feudal Law, of which the First and Chief Rule is, that one, and the same Person, cannot be a Liege Man, or Vassal of two Superior Lords.

But he mistakes both the Law of *England*, and the Maxim of the Feudal Law, which he would apply. For,

1. As has appear'd above, tho' the *Scots* did always owe *Liege-Homage*, yet they were not entitl'd to the Privilege of *Denizens*, while they withdrew it. And this according to the Feudal Law, for want of Investiture with that Fee; or else, because of the Forfeiture of the Privilege.

2. By the Feudal Law Men might be Homagers to several Lords superior to the Party, and one over another till they came to the supreme; for whose Homage there always was a *Salvo*.

C H A P. XXIX.

The First to prove, that the Subjection Evidenced by Liege-Homage, is still due from the Kingdom of Scotland to the Crown of England.

Of the time that Sir T. C. supposes the Scots have been free from Homage.

Of the release 1 E. 3, and Restitution in his Reign, if the Release ever had Force.

Page 64. "SIR Thomas Craig says, it will be manifest from the Nature of a Fee, to any Man who is not already prejudiced, or sworn to the

the Sentiments of another in either of the Nations, that the King of *Scots* owes no *Homage* to the King of *England*; for except they prove the Affirmative, the Negative is evident of it self, as having the Presumption of Law on its side; for by the *Testimony of the English themselves*, we have been in Possession of our Liberty for these *three Ages last past*, and acknowledged no Superiour.

'Tis observable, that this was writ before his Treatise of the Succession, which was dedicated to *J. 1. Jan. 1. 1603.* therefore now it must have been free for above 400 Years, if *Sir Thomas* was in the right. But that unluckily for him falls to be in the 30th or 31st of the Reign of *E. 1.* who was then in full Exercise of his Right. And whereas he will have the Testimony of the *English* to be on their side, as if their Freedom were of so ancient a Date; he owns that *Mr. Holingshead* affirmed *H. VI.* forc'd *James* King of *Scots* to do Homage, but *Sir Thomas* being as little acquainted with the latter part of the *English* and *Scotch* History, as with the earlier, says, no *English* Historian, that I know of makes mention of the same. Page 413.

This he might easily have found in other *English* Historians of unblemished Credit; neither is it without Proof from record. Besides, it will appear, that his admired Treatise of the Succession, unwarily yields Homage to have been paid for the Kingdom of *Scotland* to *Edward 3.* and that by a rightful King of *Scotland*. Page 414.

It must be agreed, that our *Victorious King Edward 3.* being but 14 Years old when he succeeded, upon the deposing that Pusillanimous Prince, *Edward 2.* *Sir Roger Mortimer*, who thought

thought by the Murder of the Father, and Inter-
rest with the Mother, to secure to himself the
Government of the young King, and his King-
dom; as he knew the Nobility of England would
not bear his Usurpation of the *Sovereignty*, found
it his Interest to engage the Scots by the highest
Obligation: and therefore prevail'd upon the
young King to Sign a Patent, purporting a Release
of the Ancient Homage. That this was done
without the Consent of the States of the Realm,
is evident; for, among the Articles upon which
Mortimer was impeach'd in *Parliament*, Attain-
ted, and afterwards Executed for *High Treason*,
one was,

Vil. Rot.
Pa l. and
Graston A.
br. p. 87.
6.

"That he confederated with the Scots against
the Honour of England.

Another,

"That he had caus'd all the Ancient Records
of the Scots Homage, and Obedience to the
Kings of England to be delivered to them.

This gives a true account why all the Instru-
ments of Homage are not now to be produced,
but will be no disproof of such as will appear
to have escap'd his Search, or were out of his
Power.

Page 254.

It appears, not only from the Nature of the
thing, that such a Release could signify nothing,
but Sir *Thomas* himself owns, that no Man can
alienate the Rights of Majesty: and this the great-
est Asserters of the Prerogative of Kings main-
tain.

Dyer Fol.
44.

Sir John
Davis of
the question
concerning
Impositions
P. 133.

Particularly to this very point it has been ad-
judg'd, that the King cannot release a Tenure in
capite, and it had been resolv'd in a Parliament
of King *James I.* "That no Act of *Parliament*
could be framed by Wit of Man, whereby a

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Tenures of the Crown could be extinguish'd.

The Learned *Bishop Tenstaff*, in his Letter cited above, giving an Account of the forms of *Homages*, which he had sent the then *Protector*, and taking notice that one of our Kings, had released it, says, "but this could not be effectual, especially if *Homage* were done since.

He adds,

"A King renouncing the right of his Crown, cannot prejudice his Successors, who have at the time of their entry the same whole right that their Predecessors had at their first entry: as Men Learned in the Civil Law, can by their Learning shew. Yet if such release could have had any effect, Sir T. C. shews E. 3. restored the Crown of *England* to its Antient Right.

It may be remembered in what plight matters stood in relation to the present Question, when *Bruce* usurp'd the Crown of *Scotland*: that it was without the consent of his Superior Lord, and contrary to the Determination of the Parliament of both Kingdoms, which adjudg'd the Right of the Crown, to belong to *Baliol*, has appeared above.

Let's then hear what Sir *Thomas* says, in relation to that Possession of the Crown of *Scotland*, and *Homage* perform'd after it.

"After the death of King *Robert Bruce*, *Edward* Fol. 263.

"*Baliol*, Son of the former *Baliol*, taking his advantage from the nonage of King *David*, and the Factions of the *Scots* Nobility, enter'd *Scotland*, having obtain'd of *Edward* King of *England*, four thousand *English* Forces for his assistance: and gaining a Victory, he took the Crown of the Kingdom, but finding himself unfortunate in a Battel afterwards, and the

"*Scots*

Bish. Burnet's Hist.
2. Vol.
Append.
Fol. 108.

Just before
he mentions
his sister
Johanna,
agreed to be
given in
Marriage to
David. Fol.
262.

" Scots being recruited press'd hard upon him;
" he call'd in *Edward the Third* to his assistance,
" and perform'd *Homage* to him, as his Superior
" Lord for *Scotland*. *Edward* upon that Invitation
" hasten'd to *Scotland*, being nothing mov'd with
" the "Tears of his Sister; and went almost thro'
" all the Kingdom, until his own Affairs call'd
" him home, and he left *Edward Baliol* with a part
" of his Forces in *Scotland* to subdue it. But he be-
" ing unsuccessful, and as *Polidore* says, he and
" all his Men being overcome in one Battle, and
" finding that he was not able to carry on the
" War, he resigned all the Right that he had
" in *Scotland*, as his Father had done before, and
" Transferred it to *Edward*.

" From that time *Edward* look'd on himself as
" King of *Scotland*; and reckon'd it among his
" own Countries, as much as he did *Wales* and
" *Ireland*. And that he might engage the Af-
" fections of the Scots, he was willing that they
" should enjoy the same Privileges with his own
" Natural *English* Subjects.

" But that the Reader may be fully convinced
" of the truth of this, and that what I affirm is
" not a Fiction of my own, he will see it clearly
" in the Statutes of the Parliament which was
" held at *Westminster* in the 11th Year of his
" Reign, the Title of which is, *no Cloaths made*
" *beyond the Sea shall be brought into the Kings Do-*
" *minions*. The prohibition is, that no *Foreigner*
" or *Denizen*, shall bring or cause to be brought into
" the Lands within the King's Power; and the
" Lands are thus specified, *England, Ireland,*
" *Wales*, and *Scotland*, as being all within the
" Power or Jurisdiction of the King. And that
" no *English, Irish, or Scotchman*, within the Power
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of the said King shall use any other Cloths but such as are made in *England, Ireland or Scotland*. The same thing is twice or thrice repeated, in these Acts. And therefore seeing he believed *Scotland* to be not only within his own *Ligeance*, but also to be his own, he did not reckon it among Foreign Provinces, nor the *Scots*, to be others than born within his own *Jurisdiction*.

This is with Sir T. C.'s usual strength, but argues nothing to his purpose, because tho' it was so then the *Scots* might, and soon did, Forfeit the Privilege of *Denizens*: and so it has been adjudg'd by several Parliaments, which admitted none of the *Scots* to the Privilege, who were not Indentiz'd by Act of Parliament of *England*, or at least by Letters Patent under the broad Seal of *England*.

Sir T. C. goes on,

"Moreover the *English* always entertain an *Fol. 263* opinion, that the King of *Scotland*, owes *Homage* to, and is *Vassal* or *Liege-man* of the King of *England*, for the Kingdom of *Scotland*. All their Writers say it, and *Edward I.* and *H. VIII.* Claim'd it by publick Instruments under their hands, but I have considered their pretensions to that, in another Treatise.

"But whether what they assert be true or false; yet, perhaps, they had some sort of Reason for their assertion, at the time when that Statute was enacted. Thus it is certain that *John Baliol* and his Son *Edward*, whom both *E. 1.* and *E. 3.* judg'd to the true Heirs of the Kingdom of *Scotland*, did out of too great fondness of Reigning, pay *Homage* to these Kings, even for the Kingdom of *Scotland*. But that deed of

" of theirs was so thwarting to all the *Estates* of
 " *Scotland*, and to all Ranks and Degrees, of the
 " People in it; that they renounc'd and dis-
 " claim'd both the Father and the Son, and
 " follow'd *Bruce*, who was his Competitor; and
 " under his conduct repay'd the *English*, the mis-
 " chiefs and destruction they had formerly re-
 " ceived.

" But Fortune did so favour *E. 3.* at the
 " time that that Statute was made, that he
 " had not only the right of *Baliol* devolv'd on
 " him, but he had also *David Bruce*, who was
 " the true Heir of the Kingdom, and had been
 " overcome in Battle, his Prisoner. And there-
 " fore being secure of both Parties, he thought
 " with himself that *Scotland* was his own Province,
 " when that Statute concerning those born be-
 " yond Sea was made, which Trans-marines
 " only, he reckoned not to be his own Subjects.

Sir T. C.
 of *Homage*
 P. 422.

This being so by his own confession, it shew-
 " how little he considered, when he affirm'd that
 " the *Scots* had been in possession of their Liberty
 " for three hundred Years before he writ, the
 " *English* themselves being Witnesses.

Where he places it from the time of the
Baliol, but the Parliament of *E. 3.* whose Au-
 " thority he receives goes upon the Homage and
 " Resignation of the 2d *Baliol*, upon which *E. 3.*
 " was possess'd of the Power of *Scotland* in the 1st
 " year of his Reign: which was 1351. and above
 " 50 years later than Sir *Thomas* supposes the *Scots*
 " to have been free.

That they were not then, Sir T. C. has shew'd
 " to be the Judgment of *E. 3.* and his Parliament
 " and therefore the *English* were far from Wit-
 " nessing, or Agreeing to the Freedom of the

Scots long after the time that Sir T. C. there supposes they had quitted the pretention, tho' it was for his purpose to own in his History of the Succession, when he writ that, that they entertain'd an opinion that the King of Scotland, is a Vassal or Liege-man of the King of England, for the Kingdom of Scotland.

But to have a little more of his admirable way of arguing in his History of the Succession, speaking of the Judgment of E. III. when the Statute in his Reign about Foreigners was made.

"Moreover, says Sir Thomas, had he but said, or made any Insinuation, that the Scots were without the Ligeance, or Allegiance of England, he had by his own Confession, and by the Confession of the Estates of Parliament, quite ruin'd his Pretensions to Homage for Scotland. For upon what account could he have claim'd Homage from a Scotch Man, if once by his own Statutes he had plac'd them without the Ligeance of England!

I might effectually answer this by another Question: How could H. III. and other Kings after him, continue their Claim to Normandy, and other parts in France, and yet seize Lands in England, as Escheats, which would have fallen to Normans or others, had they not been adjudg'd Aliens after they had withdrawn their Allegiance to the Crown of England?

'Tis plain, the right of the Crown remain'd, but they had forfeited the Privilege of Denizens.

Further 'tis evident, that several Parliaments after the 25 of E. 3. did look upon the Scots as Aliens; and yet at the same time asserted the right of Homage for the Kingdom of Scotland.

7 H. 7.
c. 1.

4 Jac. 1.
c. 1.

As I observ'd before, this appears from Acts making Scots Denizens of England, and particularly, the 7th of H. 7. which requires all Scots not made *Denizens* to depart the Realm, within Forty Days after Proclamation. Nor were the Scots accounted Denizens, 4 of J. 1. nor after the Act then made here, till a repeal in Scotland, of several Acts made there. But to argue from the Hostilities between the Kingdoms, that England gave up a right it asserted by its Arms, is suitable to Sir T. C's. common way of arguing.

And as he seem'd little to think of consequences, he was not aware what he yielded, in confessing that the right of *Edward Baliol* was transferred to our *Edward the Third*.

For when I came to shew the State of the Successions to both Crowns, it will appear that the Right of *Bruce* which he contends for, cannot be allowed without giving up his whole controversy with *Father Parsons*; and however *Baliol's* must be allowed to be the only Title under the Crown of England: And consequently, Father and Son did not properly transfer their Rights to our *Edwards*, but effectually surrender them.

Tho' the confession of Sir *Thomas*, may make it sufficiently evident that E. 3. was after the surreptitious release of *Hemage*, fully possessed of the ancient Right of Superiority and direct Dominion over *Scotland*, the account of our *Historians* which we may take from *Grafton's* faithful Abridgement of them, makes it, if possible, more evident. "At this time *David le Bruce* the young King of Scots Fled into France.

"After this time the Scots so often Rebelled, that

Grafton's
Abr. p.
886. De.
An. 1336.
6 E. 3.
7 H. 3.

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"that King Edward made three Voyages into
 "the Land within the space of four Years,
 "and with great Manhood always vanquish'd
 "his Enemies, and made them to Swear to him
 "Fealty and Homage.

"In these Battles were Slain, well near, all the
 "Nobility in Scotland, with an infinite number
 "of the common People.

"The 19th Day of June, Edward Baliol King
 "of Scots, came to New-Castle-upon-Tyne, and
 "there made his Homage unto King Edward for
 "the Kingdom of Scotland, in the presence of
 "many of the Nobles of both Realms, and Swore
 "to him Fealty and Fidelity.

Here was a full recognition, while Bruce had
 abdicated, and he who will appear to have had
 the true right of proximity, was in quiet pos-
 session of the Crown of Scotland. By the 10th
 of King Edward's Reign, the Scots according to
 their usual Exercise of Power over their Kings,
 had remov'd Baliol from the administration, and
 were more Merciful than ordinary, or else want-
 ed opportunity of making a clear Stage for the
 abdicated Prince, or any body else, whom the French
 Faction should set up.

"At this time King Edward enter'd again into
 "Scotland, and had there a great Victory, and
 "afterwards he plac'd again Edward Baliol King
 "of Scots, and received homage of him. And
 "then the Scots, with their King, bound themselves
 "to King Edward, that whensoever he, or any
 "King of England, had or should have War,
 "either within his own Land, or with any o-
 "ther Prince, they would, of their own proper
 "expence and charges, find him 300 Horsemen well
 "Armed, and 1000 Footmen well and substan-
 "tially

Grafton
 p. 89.
 An. 1337.
 10. E. 3.

"tially furnish'd for the War, which 1300 Men
 "they would Wage for a whole Year. And if
 "the King of *England*, ended not his War with-
 "in the Year, then he to hire and wage the
 "said *Scots*, as he did his other Soldiers.

Here the general Obligation arising from
 the Tenure, and promis'd by the Homage, for
 the Kingdom was reduced to a certainty, by the
 content of the People of *Scotland*, as well as the
 King.

Yet the *Scots* again Rebelled in the 4th of our
 King *Edward*, by the incitement and assistance of
 the *French*, yet their King *David* did not return
 till the 16th.

In the 20th while King *Edward* was Prosecu-
 ting his Wars in *France*, their firm Ally inva-
 ded *England*, but the *Queen* her self Assembled
 an Army, proud to be so Headed, and took
David Prisoner, with many of his greatest
 Lords.

Grafton
 p. 92 H.
 Anno.
 1347.

In consequence of this, as Sir *Thomas Craig* has
 shewn, our King *E. 3.* look'd upon *Scotland*, as
 within the Power and Jurisdiction of *England*,
 in the 25th of his Reign which was the Year
 1352.

1352

And the *Scots*, were by the Parliament of
England, no otherwise held to be Denizens of
England, but as Subjects.

Yet Sir *Thomas* was so wise as to use this Ar-
 gument to prove their being *Denizens*, when it
 serv'd the question of the Succession, without
 considering that it was an undeniable evidence of
 the Right of *Homage*, for that Kingdom.

CHAP XXX.

*The 2d to prove the continuance of the right Cap. 30.
of the Crown of England. Of the Ho-
mage done for the Kingdom of Scotland,
1 or 2. H. 6. The right to it maintain'd
by H. 8. and his Parliament, Sir Thomas
Craig's ample Confession of the dependency
till within the Reign of Queen Mary.
With observations upon the occurrences
of those times.*

FOR 11 Years together David King of Scots,
was a Prisoner in England, during which
time Scotland was more immediately under the
King of England.

And therefore as he was taken in the Year
1347. the exercise of the Right continued in-
disputable to the Year 1358.

If David were then set at Liberty without any
Express profession of *Homage*, for the Kingdom,
it could only argue King Edward's greater ge-
nerosity, if it were not upon the account of the
large summ, said to have been pay'd for David's
Ransome.

From that time to the 1st or 2d of H. 6. I do
not find that the Duty was actually perform'd,
but then as it had been by the First, upon the
Scotch Royal Line, Edward Balliol in the Year
1337. and for several years after that Scotland
was in our King's Hands, the intermission cannot
be thought considerable.

Grafton Writing of the 2d of H. 6. says,

"In this year James King of Scots, was de-
liver'd

An. 1424. " liver'd who had remain'd Prisoner in *England*,
 2 H. 6. " by the space of 17 years, and he did *Homage*
 " for the *Realm of Scotland*.

Hall's
 Chron.

The form of it to be seen in *Hall*, is this.
 " I *James King of Scots*, shall be True and
 " Faithful unto the *Lord Henry* by the Grace of
 " God King of *England*, and *France*, and Superior
 " Lord of the Kingdom of *Scotland*, and unto
 " you I make my *Fidelity* for the same King-
 " dom of *Scotland*, which I hold and claim to
 " hold of you, and I shall bear you my Faith and
 " Fidelity of Life and Limb, and Worldly
 " Honour against all Men, and Faithfully I ac-
 " knowledge, and shall do the *Service* due for
 " the Kingdom of *Scotland*.

Our King was not then three Years Old, and
 his Uncle the brave Duke of *Bedford*, was Glo-
 riously carrying on the War against *France*,
 while his other Uncle *Humphrey Duke of Glou-*
cester, executed the Trust repos'd in him by the
 Parliament of *England*, in requiring this recog-
 nition from the King of *Scots*.

This being but the due *Homage*, which had
 been recogniz'd from of Old, it can be no ob-
 jection that the King of *Scots* was then a Priso-
 ner, any more than their Kings being always in
 the Power of the King of *England*, while he
 did *Homage*, could set aside all instances of per-
 formances of the Duty.

If the *Homage* was not binding, neither had
 the *Scots* any Lawful King, but the Fee remain'd
 consolidated to the Crown of *England*.

Besides to fix this upon the Nation, without
 possibility of evading it, our Records of
 the time shew, that by a Solemn agreement made
 in a Parliament at *Tork*, between the representa-
 tives

Not. claus.
 2 H. 6.

tives of both Kingdoms, Commissioners were appointed by the *Protector* of the Kingdom of *Scotland*, under the great Seal of that Kingdom, to treat with our Commissioners on the Terms for delivering their King : and we had not only several Hostages, but the obligations of *Edenburgh* and other Towns, for the performance of what was to be done by the *Scots* ; a Record was, by Commissioners on both sides, agreed to be made of the *Oath* taken by the King of *Scots* ; and he afterwards, at full Liberty, ratified the whole Agreement, under the Broad Seal of *Scotland*.

If this had not been with the full consent of his Kingdom ; as *Sir Thomas Craig* holds that he ought to have been disown'd for thus subjecting his People, we should have heard of some tumults upon this *Submission* : but the People took their King very contentedly upon these Terms, and that tho' he was not the first upon the Royal Line.

Thus it appears that the *Scotch* Nation, as well as the *English*, then agreed, that Homage was due to the Crown of *England*, for the Kingdom of *Scotland*.

This *H. 8.* asserted to the full in a Declaration of War, 33 of his Reign, wherein he set forth many Evidences from Histories, Records, and Instruments of Homages. But to silence all objections from private Opinions, or Resolutions of Judges, as if the *Homage* of the *Kings* of *Scotland*, and subjection of them and their People had been extinguish'd before that time ; an Act of Parliament in the 34th of his Reign, for the remission of a Loan which had been granted, reciting the Ingratitude of the *French King*, after many benefits receiv'd of King *Henry*, and

Rastall's
edition of
Stat. An.

35. 11. 8.
his An. 1544

his bringing the Turk into Christendom, adds,

"And whereas his Majesty is Justly and Lawfully Intitled unto the Crown and Realm of Scotland, to whose Highness, as to their Natural Liege Lord, all the Inhabitants of the same ought to bear due obedience and be Subjects; yet nevertheless the same French King, ceaseth not daily to procure, move and stir the same Scots, contrary to the Duty of their Allegiance, Faith, and Promises confirm'd with great Oaths, not only to Rebel against his Majesty, but also to make Divers and Sundry, Incuries, Invasions, Spoils, Burnings, Murders, Wastings, Depopulations, in this his Realm of England, and to make open War against the King's most excellent Majesty, this Realm of England, and other his Graces Dominions. Therefore the King determin'd with the Power of his Realm, to reduce and bring his said Enemies to reasonable conditions.

Thus the right of the Crown of England, to the Allegiance of the People of Scotland, is fully Declar'd, and asserted by Act of Parliament.

Sir T. C.
fol. 164.

This being in the Year 1544. was not 160. years since. H. 8. and his Parliament were not in the least aware of the consequence which Sir Thomas Craig thought inavoidable, that in calling the Scots Enemies, by his own confession, and the confession of his Estates of Parliament, he quite ruin'd his pretensions to Homage for Scotland.

But 'tis manifest they were not accounted Dependents of England, because they forfeited the Privilege they had been Entitled to, if they had kept to their Duty.

It

It may well be thought that *H. 8.* growing in years, and his Son and Heir to this Imperial Crown being a *Minor*, while the Heiress of the Crown of *Scotland* was yet younger; that wise King *Henry* and his Council, would endeavour to make use of that favourable opportunity, of taking from the *French Faction*, all pretences of disturbing the Peace of this *Island*; by an honourable Annexation, of the Feudal Crown of *Scotland*, to the Imperial Crown of *England*, upon a Match between the Heir of *England* and the Heiress of *Scotland*: this one would think the *Scots* should have desired above all things, for the taking away what they held the reproach of their Nation; that their King should be an Homager for his Crown.

On the other side, as not only the hopes of *France*, but of all the Partisans of the See of *Rome*, were likely to be dash'd by such a conjunction, and the Children of this World are wisest in their generation, it will be no wonder if all good Men were disappointed of the glorious Days which they then promis'd themselves.

How and upon what Ground, those hopes were defeated, who were to blame, the *English* or the *Scotts*, and who were the greatest Sufferers upon that occasion, I desire *Sir Thomas Craig's Admirers*, to take from no less an Authority than that which themselves cry up.

"After, says he, King *James 2.* of *Scotland* Sir T. C. of the Succession Fol. 247.
 "was dead, there remain'd his only Daughter
 "and Heiress of the Kingdom; who was born
 "but 6. Days before her Fathers Death. *H. 8.*
 "had a Son *Edward* who was a most hopeful
 "Prince, and at that time in the 4th year of
 "his Age. *Henry* being a wise King; and desirous

"desirous above all things to promote the Well-
 "fare and Interest of his own Kingdom; lays
 "hold of an occasion that offer'd it self, and
 "having many *Scots* Noblemen, who had been
 "taken in War Prisoners at that time, he set
 "them all at Liberty, and having bestow'd Rich
 "Gifts and Presents upon them, he order'd them
 "to return to *Scotland*, taking their promise
 "only for this, that they should use their best
 "endeavours to promote that Union and Con-
 "junction of the two Kingdoms, which had
 "been so often and so long wish'd for by both,
 "now that a fair opportunity offer'd it self. They
 "after their return to their Country, did faith-
 "fully perform their Promise. For they be-
 "lieving it to be for the Interest of the far greater
 "party of both Nations, made it their whole Busi-
 "ness to have that Marriage between Prince
 "Edward and Queen Mary agreed upon, and the
 "Regent was at that time earnest enough for
 "it, and so without farther delay upon the arri-
 "val of the *English* Embassadors, that Affair was
 "concluded and the Treaty Ratified and Confirmed,
 "by the Great Seals of both Kingdoms.

Fol 348.

"But the Enemy of Peace and Union hindred
 "the Affair then begun. There was at that
 "time in the Kingdom of *Scotland*, one Cardi-
 "nal *Beaton*, a fierce Prelate, who was most Zea-
 "lous and Faithful to the Interest of the Church
 "of *Rome*. This Man having assembled the
 "Clergy throughout the whole Kingdom, told
 "them, that he and the whole Ecclesiastical Or-
 "der would be destroy'd, unless a stop was put
 "to that Match. *Henry* had now openly made
 "defection from the *Pope*, seiz'd the Church
 "Lands, and invaded all the Donations which

" had

had been given to Churches, his Son would do the like in *Scotland*; and introduce *Luther's* Heretical Opinions. The Church of *Scotland* would be ruin'd unless the Clergy, every one of them as they could, oppose that Marriage, that it might never take effect, by importuning the Nobility according to every Mans Occasion, Interest or Friendship with them: and that the Monks and Friars should by their Sermons stir up the People, to get the Treaty of Marriage broken. Neither did they desist, till they obtain'd what they aim'd at, having enticed the Regent, and brought him over to their Party, by hopes of great Preferment in *France*: even as the Title of Dukedom of *Castelleraut*, was at that time conferr'd upon him. This gave occasion to many Calamities, wherewith we were afterwards afflicted, our best Towns were burnt, the Scots Army was overcome after a most bloody Fight, while before the Engagement between the Armies, the Protector of England by Letters full of Humanity, desir'd only of our Country Men that the whole Affair might be delay'd, until our Young Queen should come to Marriageable-age, and that in the mean time she should not be dispos'd of in Marriage to any other, but left to chuse a Husband for her self with the advice of the Estates. But the Destinies push'd forward our Miseries, and the Letters being receiv'd by the Abbot of *Dunferling* were suppress'd; and a Battle was most unfortunately fought at *Pinkie*. But after this Battle our Country Men being encouraged by some Assistance, and promises of the King of *France*, who believ'd that the Union of both Kingdoms would be very prejudicial to him, they remitted nothing

" thing of their former stiffness, the *Prelates*,
 " like so many Furies stirring them up.

" The *Estates of England*, tho' Victors wrote
 " most courteous Letters, by which they did
 " with much concern sollicite us to an Agree-
 " ment, and to our common Peace and Quiet,
 " laying before us the Difficulties and Mischief
 " which might accompany a War, should it be
 " continued; and of the Advantages which we
 " might reap by entring into Friendship with
 " them.

" First, say they, such as shall read our Histo-
 " ries will find, that there have been many most
 " destructive Wars between the two Nations,
 " and they must be amaz'd, that the People of
 " the same Country and Language, should have
 " such cruel and deadly Quarrels among them-
 " selves; and, say they, nothing is so much to be
 " desir'd, as that by some means the People of the
 " whole Island may grow into one civil Body, and
 " be under one Government. Neither can any
 " better Expedient be found for obtaining that
 " end than Marriage is. And when God Al-
 " mighty has pointed out to us, and afforded us
 " that Means, we, meaning the *Scots*, by our own
 " doings oppose it, while from that Marriage
 " there might be a Bond of perpetual and immor-
 " tal Friendship between both Nations: and that
 " we rejected that Occasion that had been so
 " much wish'd for, and yet did offer it self before
 " for these 800 Years past.

" They, tho' Victorious, and almost Conquerors,
 " courted the *Scots* into a Peace, and while they
 " possess'd a great part of *Scotland*, were ready
 " to share their own *England* with them. Nay,
 " they offer'd that, laying aside the names both
 " of

" of *English* and *Scots*, thereby to take away all
 " Names of Distinction and Hatred ; both Na-
 " tions should be call'd *Britain*, as being a de-
 " signation common to both Kingdoms, they
 " promis'd us a share of all their own Advanta-
 " ges, and at last they cry out, *O Miserable and*
 " *Wretched Obstinacy !* We are on all quarters en-
 " clos'd with the Sea, as with impregnable Walls
 " and Bulwarks ; so that were we united among
 " our selves in a firm Friendship, our Happiness
 " should be compleated, and we should make a
 " most Flourishing Monarchy.

" These things, and much more to this pur-
 " pose are contain'd in those Letters, by which
 " the *English* themselves bear Witness, that the
 " Union of both Kingdoms was not less heartily
 " wish'd by themselves, than by us.

" And indeed in all that War, which from
 " that time that it lasted was call'd the Nine
 " Years War ; the *English* had the Advantage of
 " us, both as to the Success of their Arms, and their
 " Cause, our aversion to the true Religion, which
 " at that time we call'd Heresy, and the Power of
 " the Ecclesiastical State, which then made a great
 " part of, and had great Interest in the King-
 " dom were highly prejudicial to us ; or rather,
 " it may be ascrib'd to this, that we should not
 " be united, unless our Blessed Lord Jesus was
 " the Reconciler, and the Light of his Gospel,
 " directing our way ; which after it shined upon
 " us also, we not only rejected the Power of
 " France, with that Friendship which had cost us so
 " much Blood ; but we most religiously maintain'd
 " a Friendship with the *English*, and made use of
 " Auxiliary Forces from them.

" The

" The *Humanity* of the *English* did indeed over-
 " come all causes of Hatred, which our Country-
 " men did afterwards witness by their Deeds.
 " For while our Queen, who was Dowager of
 " France, was to assist the King of France, he be-
 " ing at that time overcharg'd with War, both
 " by the *English*, and *Spaniards*. She caus'd War
 " to be proclaim'd against England, which the
 " Scots Nobility took very ill; and when they
 " met in Arms in Obedience to the Proclamation,
 " the Queen took care to have the Artillery sent
 " over *Tweed*, before the Affair could be thoroughly
 " consider'd, and all things were in readiness for
 " besieging the Castle of *Wark*. But the Nobility
 " being extremely displeas'd, that this was done
 " without the publick Advice of the Nation, and
 " that they did not reckon it a necessary War,
 " they desisted from the Siege, and disbanded
 " the Army. For they said, that they might
 " employ their time better, than to make War
 " without a Just Cause upon their Neighbours,
 " who had in no wise provok'd them to it, by doing
 " them any Injuries.

An. 1557.

" Such was the grateful Sense that they retain'd
 " of former good Offices. These things were
 " done in September, in the Year 1557. since
 " which time, even our greatest Enemies them-
 " selves acknowledge, that the Friendship and
 " Alliance with *England*, has been truly, and
 " sincerely kept by us.

It would have been pity to have left out any
 part of so ample a Confession, of the Humanity
 of the *English*, and Obstinacy of the *Scots*, out-
 of their then Love to *France*, and *Popery*.

I must observe upon this, and the History of
 the Times.

Grafton
 De An
 1548

1st. That

1st. that in the Year 1548. while the Council of England was in some expectation to get the young *Queen of Scots* for their King, the *French* caus'd her to be privily convey'd away into *France*, and there she was Married to the *Dolphin*.

2. That the *Scots* did not disband the Army rais'd against *England*, upon so Noble a Motives induced the *States of England* to offer to quit all the Advantages their Arms had given : For, 'tis evident, that this was chiefly, that they might the more effectually carry on the Reformation ; but the *Scots* disbanded their Army in the 4th of the Reign of *Queen Mary*, as great a *Bigot* for *Rome*, as the *Scotch Cardinal Beaton*.

3. As that great Man the Duke of *Somerset*, Ancestor of the present deserv'd Successor in that *Dukedom*, had the chief Administration of Affairs at that time ; and as appears by Bishop *Tonstall's* Letter to him, was fully Appriz'd of the Superiority and direct Dominion of the Crown of *England* over the Kingdom of *Scotland* ; his not taking the Advantage of repeated Victories, to set aside the Possession of the *Queen of Scots*, after the Marriage so generously offer'd, had been rejected, was a demonstrative Evidence of that excellent Persons Sincerity, and preferring the carrying on the Reformation, and the Interest of Religion, to all other Considerations.

As the People of *Scotland* chose *Popery* and the side of *France*, they chose to keep up the controversy about the dependency of that Kingdom, which might have been buried by a Match, so much for the good of both Kingdoms, that nothing but a strong attachment to a Foreign Interest, could have prevented it.

5. As

5. As they kept up the controversy which was begun in the Reign of *H. 8.* who in his Declaration of War asserted his Superiority and direct Dominion over *Scotland*, the event of the nine Years War, being not only on the side of King *Henry*, but afterwards of his Son *Edward* the 6th as Sir *Thomas Craig* himself has fully own'd, the Crown of *England* was at the end of that War in full Possession of its Right.

6. As the Declaration of War, by *Mary Queen* of *Scots*, was contrary to her Duty who was an *Homager* to the Crown of *England*; the Nobility of *Scotland* by disbanding the Army then rais'd, disavow'd that Renunciation of Homage, and therein submitted to the Right of the Crown of *England*, maintain'd by the event of the nine years War.

7. Tho' the Nobility did thus acquiesce, yet till some King or Queen of *Scotland* was restored by a new Investiture after that Declaration of War, or the coming to the Crown of *England* purged that disability to have the Crown of *Scotland*, it was not Rightfully held, by any Person.

CHAP. XXXI.

The 3d proving the continuance of the Superiority in the Reigns of J. I. C. I. Of the condition of the Scots in the times of Usurpation and the consequence of it.

AS Sir Thomas Craig agrees from the Year *vid. ibi* 1557. till the time of his Writing about *Pres.* the Succession, but a little while before which, King James came to the Crown of England; there was a firm Friendship between England and Scotland, this was far from diminishing the Right of Homage, so often renewed and to the last asserted with success.

During the Reign's of J. I. and C. I. the Homage continued in suspense, but the Right of the Crown untouch'd. Soon after, the Affairs of England and Scotland had a new Face; and according to a Prophecy of the Scotch Merlin cited by Archbishop Usher, and seeming to point at events from the uniting the whole *Vid. Antiq. Bri.* Island under J. I.

Ut Merlinus ait, post Reges victoriosos,

Regis more carens regia sceptrum geret.

As Merlin says, Victorious Kings being gone,

One without Royal Ensigns mounts the Throne.

This may be thought to point at the Government of Oliver Cromwel, who had been appointed General against the Scots; by the Usurpers of the Power of England.

He, and General Monk acting in his absence, having subdued the Force of Scotland, and settled Garrisons where they found it requisite, to keep them under the Parliament of England, as the party who acted call'd themselves; to the end the People of Scotland, should be united with the

Vid. the
Hist. of
the Union
ed. An.
1660. p.
109.

p. 110.

' People of *England*, into one Common-wealth,
' and under one Government; sent Commissio-
' ners into *Scotland*, to invite the People of that
' Nation unto such an happy Union, who pro-
' ceeded so far therein that the *Shires* and *Bo-*
' roughs of *Scotland*, by their Deputies appearing
' at *Dalkeith*, and again at *Edenburgh*, did accept
' of the Union, and assent thereunto: which was
' seconded by *Cromwel*, then *Protector* of the
' Common-wealth of *England*; who by the ad-
' vice of his Council, ordain'd *April 5th 1654*.
' That all the Dominions of *Scotland*, of the *Isles*
' and Territories thereunto belonging, were and
' should be Incorporated into, Constituted, and
' Confirmed, one Common-wealth; thirty Per-
' sons should, be called from, and serve for *Scot-*
' land. Which ordinance was confirmed by the
' Parliament in the year 1657. so many Knights
' and Burgeses as before was expressed, who were
' call'd and summon'd according to the said Or-
' dinance, were admitted to sit in the said Par-
' liament, and did Vote and Joyn with the *Eng-*
' lish; in the making and enacting Laws.

' Which Laws, says my Author, do bind
' and oblige the Commons of *Scotland*, as well
' as the Commons of *England*; because the
' Knights and Burgeses, being chosen by the as-
' sent of the Commons of either Country, do re-
' present the Estates of the several and distinct
' Commons of either Country.

I shall not take upon me with that Author, to
maintain those Laws still to be obligatory; but I
may observe.

12. Car.
2. c. 11.
Par. 23.

1. That by the Act of Indemnity 12 Car. 2.
whatever ensued upon the Hostilities between
the then late King, and the Lords and Commons
then

then in Parliament Assembled, whether trenching upon the Laws and Liberties of this Nation; or upon the Honour of his said Majesty, or Authority of the Parliament; or to the prejudice of any particular Person, was not to be called in question.

2. An other Act for confirmation of judicial proceedings, provides, among other things, that proceedings there specified in, upon pretended Acts, or Ordinances, made by both or either House of Parliament, shall be as if they had been Good, True and Effectual, and afterwards enacts, that the Names and Stiles used to them, are most Rebellious, Wicked, Traiterous, and Abominable Usurpations; but the Acts and Ordinances of those times in general, are no where that occurs to me, set aside or declared Void: not but that some in particular are.

3. To the acquisitions made by them who were possessed of the Power of *England*, and the submission of the *Scots*, then possibly some may apply that of *Grotius*.

Neq; enim refert quomodo gubernetur an Regis, an plurium, an multitudinis imperio. Idem enim est populus Romanus sub Regibus, Consulibus, & Imperatoribus.

For neither Matters
It how it is govern-
ed, whether by the
Authority of a King,
or many, or the mul-
titude. For 'tis the
same People of Rome,
under Kings, Consuls,
and Emperors.

*Grotius
de jure
belli &
pacis lib.
2. c. 9.*

'Tis certain we kept *Dunkirk* till King *Charles* or some Body else sold it, as we still do *Jamaica*; tho' both were gain'd to the Crown of *England* in the times of Usurpation.

Z 2

How-

However, as the *Superiority over Scotland* is no new Acquisition, the Usurped Powers left the Crown of the Kingdom of *England* in full Possession of its ancient Right. What ever may have been the effect of King *Charles's* not insisting upon the union, the Right of the Crown was never parted with.

4. Who ever considers the purport of the Dedication of the 2d Volume of the *Lord Clarendon's* History, may see, that as far as the judgment of the Person or Persons, who writ the Dedication can conclude their Party, they cannot deny but King *Charles*, by taking the Covenant in *Scotland*, effectually Abdicated or Renounced, being King of *England*; and consequently whatever Right over the *Scots* was acquired during that Abdicaton, must needs have been effectual to all intents and purposes.

To illustrate which 'tis observable, that in the Sense of that Dedication, the Interest of the Church of *England* is so interwoven with the constitution of the Government, that as not to protect the Church is a failure of the regal Duty; for a Prince to lay himself under any Obligation to destroy it, is the highest Violation of the Constitution. Upon this very account *Archbishop Sandcroft* and others, the most Zealous Assertors of the Right of *Monarchy*, joyn'd in inviting his late Majesty, when but Prince of *Orange*, to take upon him the Government of *England*: but what ever obligation King *James* lay under, from his Religion, to bring in *Papery*, and what ever Evidences he had given of his intentions to ruine the establish'd Church; they were but small in comparison with what King *Charles* engaged to, before

before the Scots would admit him to Reign over them.

The Scotch Parliament convened at *Edinburgh* soon after the Death of King *Charles the First*, by virtue of an Act of the Committee of Estates who had Power and Authority from the last Parliament, for convening the Parliament, acknowledging, that *Charles Prince of Scotland and Wales*, had just Right, Title and Succession to the Crown of these Kingdoms; Declared that he was King by the Lawful Right of undoubted Succession and Descent, which all the Subjects of that Kingdom were bound to obey, according to the *National Covenant*, and the Solemn League and Covenant betwixt the Kingdoms. And because his Majesty is bound by the Law of God, and the Fundamental Law of that Kingdom, to rule in Righteousness and Equity, to the honour of God, the good of Religion, and the Wealth of his People; it is thereby declared, that before he be admitted to the exercise of his Royal Power, he shall give satisfaction to that Kingdom, in those things that concern the Security of Religion, the Unity betwixt the Kingdoms, and the good and Peace of that Kingdom, according to the *National Covenant*, and the Solemn League and Covenant.

They send Sir *Edward Douglas* to acquaint the King with this, and in the mean while appoint a Solemn Fast and Supplications that God would prosper their addresses to the King, for the good of the King and State. Their first instruction to Commissioners to the King, sent after Sir *Edward Douglas*, was, that his Majesty take the Covenant.

*Vid Exalt
History of
the several
Changes of
Govern-
ment, from
the horrid
Murder of
King C. 1.
to the happy
Restaura-
tion. Ed An.
1660. p.
7. 8.*

*Ibid. p.
10.*

p. 27.

p. 39.

That would not then go down, nor would the Commissioners or States of Scotland upon any terms admit the King, but upon that and other conditions.

p. 40.

However, thinking to force his way, he granted a Commission to Montrose, to levy what Forces he could beyond Sea, and with them to joyn the Lord Seaforth, Major Straughan and others, who had got to a Head for the King without the Kirk, in the North of Scotland: but they were Routed before he came by Lesley, and himself not long after his arrival defeated by a Party of the Kirk's, taken Prisoner, and Hanged at Ednburgh.

p. 49.

And this tho' he Acted by Commission of him, whom they had before declared to be their King, by the Right of Succession, and Descent.

The King finding they would not, however, admit him to the Possession, without complying with their Terms; Before he was Crown'd took the Solemn League and Covenant, and subscrib'd a Declaration of the Kirk's own framing, wherein he declared, ' That he renounced the Sins of his Fathers House and of his own, (the Idolatry of his Mother, by a constant adhering to the cause of God, according to the Covenant) in the firm Establishment of Church Government, as it is laid down in the Directory of publick Worship, Confession of Faith, and Catechismi.

A Solemn
League
and Cove-
nant for Re-
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and De-
fence of Re-
ligion the

The second Article of that Solemn League and Covenant which King Charles took, was thus.

' That we shall without respect of Persons, endeavour the extirpation of Popery, Prelacy, that is Church Government by Archbishops, Bishops, their Chancellors and Commissaries, Honour and Happiness of the King, and the Peace and Safety of the three Kingdoms, England, Scotland, and Ireland.

' Deans.

' Deans, Deacons, and Chapters, Archdeacons,
' and all other Ecclesiastical Officers depending
' on the Hierarchy, Superstition, &c. That the
' Lord may be one, and his Name one, in the
' three Kingdoms.

Before the Scots had Crowned their *Covenant-
ing King*, they who Acted as the Parliament of
England, were before hand with them, and inva-
ded *Scotland*; after which the King being
Crowned and Marching with such Force as he
could into *England*; by the celerity of *Cromwel*,
coming up unexpectedly to that Fight at *Wor-
cester*, so fatal to the Royal cause, King *Charles*
was obliged to retire beyond Sea; which gave
the Power of *England* opportunity to compleat
the reduction of *Scotland*, which being while
King *Charles* had abjured the Church of *England*,
whether thereby the reduction of *Scotland* was
the more, or less absolute, Men may judge ac-
cording to their different Sentiments.

But take it either way, and tho' nothing of this
kind had hapned in the times of Usurpation, it
must be agreed, that the Claim and Exercise of
the superiority of the Crown of *England* over the
Kingdom of *Scotland*, is far from being anti-
quated.

C H A P. XXXII.

Cap. 32. *The 4th proving the continuance of the superiority and direct Dominion of the Crown of England, over the Kingdom of Scotland, by refuting Sir T. C.'s Brief and Summary conclusion, with his new and strong Arguments against the Homage, which he calls Fictitious.*

P. 415.

SIR T. C. to put an end to the dispute, concludes it to be 'certain, that in the time of 'the *British Kings* there was no such thing as 'Homage in the World, nay nor during the 'Reign of the *English Saxons*, until *Atbelstan's* 'time.

The contrary of which I believe no Man can reasonably doubt of, who will attend to what I have produced: and yet they cannot but perceive, that if there had been no such thing, it would be no Argument against the superiority and direct Dominion, of the *British*, since *English* Crown, over all those parts which now are call'd *Scotland*.

He complains of the *English Historians*, as if they would obtrude a commentitious Homage upon the *Scots*, by a direct Paralogism, a *dicto secundum quid ad dictum simpliciter*, from a thing said in a certain respect to a thing said simply. For 'whereas the Homage as he says, was due and 'perform'd, for the Countries given in Fee, yet 'they have left it upon record in general that 'this Homage was perform'd.

But I suppose 'tis more Evident that the *Paralogism*

logism lies in his own Fictions, as if the Scots held p. 416, any thing of the Crown of England reputed part of it, besides the Kingdom of Scotland and *Zedny*, before their *Malcolm's* Temporary Enjoyment of *Cumberland*, and that their *David* was Earl of *Huntington*: and therefore before such times the doing Homage was in its nature simply, without special regard to Lands which they had not, and if they pretended to any of them, their claim was not allowed; and yet they did Homage.

Again, he supposes the Historians invert the *Paralogism*, and contrary to the mind of their Predecessors, have proceeded from a thing said simply to what was said in a particular respect: and that they finding it simply mention'd in former Writers, that the Scots had perform'd Homage, they appllied it, that Homage had been perform'd for the Kingdom.

What I have produced is from Authorities, some within the very times, and others so near it, that they could not be deceiv'd; they not from Writers alone, but numbers of Charters, evincing the Superiority and direct Dominion of the Crown of England, over the Kingdom of Scotland; and consequently, that when ever there was no particular Limitation; (which, when it was allowed, was either with a *salvo jure* to the Crown of England, or so as it could not be bound) as it was done simply Homage; for the Kingdom was necessary implyed, and could not be separated from the Act, it being the *Liege-Homage* of the King of Scots, wherein he recogniz'd the Superiority of the Crown of England over him and his Kingdom; and this, if not always, done with the exprels consent of his States, in pursuance of what they had over and over often bound themselves to.

But

P. 416.

But, says Sir Thomas, that I may come to the Kings of the Norman Race, who of all the Kennel of Cloyster'd Monks, did ever say, that Homage was perform'd for the Kingdom of Scotland, either to William the Father and Son, or to Henry the 1st. or 2^d. before William King of Scots.

No Man surely now will deny, but Homage was perform'd to the two Williams, for the Kingdom of Scotland.

If no Homage were done to H. 1. his desire of the Scotch Match, might be thought to have suspended the exaction of his Right; and if H. 2. in the beginning of his Reign took Homage, allowing the King of Scots a Salvo for his Dignities, these things being, as appears above, highly improbable, as contrary to the Course of History, and the Series of Transactions between the two Kingdoms, ought not to be believ'd without a great an Unanimity in Historians, as there is in the Story of *Bess Mure*; but that there is not such an Agreement, as to the Homage perform'd either to H. 1. and H. 2. appears that in, the *Chronicle of Mailros*, which was more exact in relation to what pass'd between the English and Scotch, than any History quoted for the *Salvoes*, says,

Anno.
1157.

Rex Malcolmus Scotorum veniens ad Regem Anglia Henricum, apud Cestriam devenit homo suus, eo modo quo Avus suus fuerat homo veteris Regia Henrici.

Malcolm King of the Scots coming to Henry King of England at Chester, became his Man, in the same manner as his Grandfather was the Man of King Henry the Elder.

The

The Bishop of *Carlisle*, who throughout gives greater Credit to the *Scotch* Antiquities, than to the *English*, says of this,

"Which is the first time any such *Salvo* is recorded.

His Lordship, it seems, looks on the *Scotch* Copy of this *Register*, as most *Authentick*, taking that for the Record, in a matter which he owns is not taken notice of in the *Oxford* Edition, but only in the *Manuscript* Copy which they have in *Scotland*. Scotch Hist. L. 6. p. 80.

I will appeal to his Lordship, which is most likely to be true; that either the *Manuscript* Printed by Authority of the University of *Oxford*, left out a *Salvo*, or that such an one has been interpolated in *Scotland*; and which is rather to be thought the *Original* Register; especially since his Lordship says, the *Monastery* it self seems then to have been in *English* Hands.

Sir G. M. who had much ado in this matter to keep up the Complement between him and that University, says, the Differences of that Printed at *Oxford*, from theirs, shall be Printed. But he was as prudent in not causing those Particulars to be Printed, as in not making good his Promise to give at large the Second Act, settling the Succession upon *Elizabeth Mure's* Children. The Antiquity of the Royal Line of Scotland clear'd and defended p. 96.

And the Bishop of *Carlisle*, who had seen several of the *Manuscript* Copies in *Scotland*, and had one of them when he writ, was more kind to them than to shew wherein they differ from the *Oxford* Edition. Scotch Hist. L. p. 81.

If, notwithstanding the Authority of the true Register of *Mailros*, it were to be believ'd, that *H. 1.* and *H. 2.* allowed *Salvoes* for the *Scotch King's* Dignities; the Submission of that King and

and Kingdom afterwards in *H. 2d's* Parliament at *York*, were full Recognitions of the Ancient Right of the Crown of *England*.

Sir T. C. p. 417. Sir *Thomas Craig* says, That the true form of the Homage done by the Kings of *Scotland*, was with a Salvo for their own Dignities and Rights; and that sometimes it was expressly added. For their Lands and Dominions in *England*, not only by *Malcolm* and *William*, but by every one of their Predecessors, or Ancestors, is plainly testified by King *Richard*; and that *Scotland* was always independant both in his time, and that of his Predecessors.

Whereas it has appear'd

1. That if *R. 1.* had testified any such thing in a Charter, witnessed by no one *English* Peer, but his Brother *John*, it could have been of no manner of Signification.

p. 301. 2. He forgets his own Quotation of the Words of that Charter of *R. 1.* quitting *William* King of *Scots* from all Agreements, and Covenants, which his Father had extorted from *Malcolm*, by new Charters, and his Imprisonment;

So as he perform intirely and fully to us, whatever *Malcolm* King of *Scots* his Brother did, or of Right was oblig'd to do to our Predecessors.

It adds,

And we shall do unto him whatever our Predecessors did, or of Right were obliged to do to the said *Malcolm*, viz. as to his safe Conduct coming to, returning from, or staying in our Court.

Is this which leaves what was to be perform'd by the King of *Scots* to the ancient Right, and makes

makes it Evident that he was to attend at the King's Court, to perform the Ancient Service, any thing like testifying, that the King of Scotland was always independent ? For want of Arguments, Sir T. C. would have Declarations of War by *Alexander* the 2d and 3d, contrary to the Duty of their Homage, to prevent the conveying to *Posterity* all Suspicion of their *Servitude*; and would have that Epistle of Pope *Boniface*, which has been refuted above, to be a divine Record of their Freedom, and to set aside the Authentick Record of the Homage done simply without any particular Lands & E. 1. with his Salvo for having it express'd for the Kingdom, when he should think fit, an Allowance of it only for *beneficiary Counties* in England.

He says at the Inauguration of their Kings, the Consent of the King of *England* was never required; nor was the renewal of the Investiture ever demanded from any Successor to the Crown of *England*: and says, that *Baliol* was the only Man who ever had Investiture from the King of *England*, and that he purchas'd by Bribery: not being aware that his Manuscript of the Succession would be Printed, where he owns, that *Baliol's* Son did the same, as has appear'd above; however if it had never been renewed, seizin of the Homage for the Kingdom, was a seizin of all the rights incident to it, and it has been adjudg'd, * that "doing of Homage is seizin of all Services, both Interior, and Superior, because in doing Homage, he takes upon him to do all Services.

He would make a mighty Inference from the Wars, Peaces, and Truces, between the Kings of *England* and *Scotland*: as if he had never read of our Barons Wars, in which there had often been

p. 417.

p. 418.

419.

* Vid Be-

vil's c. 4.

Rep. 3. b. i.

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de hom. &c

Fealty; sei-

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Fealty 2.

Fesant de

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the like between the Kings *John* and *Henry 3d* and their Subjects of *England*.

P. 419.

"As for your Court of Parliaments, says Sir *T. C.* we did not only never acknowledge their Superiority over us, but were never summon'd, to them. Which shews either gross Ignorance, or something worse.

So that from the true state of those Facts, from which he concludes the impartial Reader will be able to judge, whether the King of England could claim any Right of Superiority over Scotland; if there were no evidence of other matters relating thereunto, the Affirmative may appear to any Man, who is not hardned against all Conviction.

419. 420.

He adds the consideration of right of Wardship, which, as I have shew'd, is not an inseparable incident to Homage; but if it were, the Right was sufficiently recogniz'd, in paying the Homage, and so 'tis of Marriage.

P. 421.

Whence, but from his own Book of Feuds, could he infer, that the direct Dominion of a King over any Country, may be lost by 30 Years Possession of any who hold of the King? and with what regard to Truth does he affirm,

P. 422.

that they have been in Possession of their Liberty for 300 Years since *Baliol's* time, meaning the first *Baliol*, tho' as has appear'd, *E. 1.* was in Possession for some Years

P. 422.

after *Baliol's* Resignation, besides the mean continuances. He would frame a mighty Argument from their having Parliaments, without any consent of the *English* demanded, in calling, or holding them: and might as well argue that the *English* Plantations are independent, where such Assemblies are call'd and held from time

time

time to time, without taking any direction from hence.

As to the Justice which he pretends their Kings have Administred, I have shewn by what Law it was, and that the Chief Justice of *England* has been their Chief Justice, by the consent of a Parliament of both Nations; that is in truth of an *English* Parliament, where their Representatives have been admitted to Vote.

“But lastly, there is, says he, that adamantine or inviolable League betwixt the *French* and the *Scots*, which could never be infring’d by any revolution of time, and wherein both Kings do expressly promise upon Oath, to assist one another against their common Enemy, the *English*, with offensive and defensive Arms; and that this League was made 200 Years before the *Norman* Conquest, *Hollingshead* himself bears us witness: upon which he asks “Where was it ever heard of, that another King’s Liege-Man or Vassal enter’d into a League with his Lord’s Enemy?”

Admit it true, that such a League were so ancient, could Sir T. C. think to impose this as an evidence of the sincerity of his Country-men? and if the Homage done, and Fealty sworn by the Kings of *Scotland*, were only for Lands in *England*, which Sir T. C. contends for, that had obliged their Kings for many Successions before, and after the reputed Conquest, and they had expressly bound themselves, to be the King of *England*’s Men, for Life and Limb, and Worldly Honour, and to them to be True and Faithful for what they held, against all Men without Exception.

And

And besides, that this alone required the not entering into any League, contrary to this Obligation, the Homage and Fealty having been for the whole Kingdom of *Scotland*, makes it past all possibility of question; and according to the import of the common Obligation, in *Henry the Third's* time, the King of *Scots* expressly bound himself and his Heirs to this, by Charter: and the whole *Scotch* Kingdom have more than once solemnly renounced all Confederations with *France*.

And the more inviolable the League with *France* is suppos'd to be, the more ought all honest Men, both in *England* and *Scotland*, to enforce the Duty of Homage for the Crown of *Scotland*; and that Subjection of which it has ever been a Recognition.

But as no Man can pretend to weaken that Demonstration, with which our judicious Historiographer has set aside the Fictitious League between *Charlemagne* of *France*, and *Achani* suppos'd to be King of the *Scots* here, while as has appear'd above, the Power in those Parts was *British*; 'tis very remarkable, that the first Act in the Reign of *Robert the Second*, to settle the Crown upon *John the Son of Elizabeth Mure*, was in the very Year when the Famous *Adamantine League* so often renew'd, call'd the Old League, the Famous Alliance, was first enter'd into.

This being so many Years after Homage and Allegiance for the Kingdom of *Scotland* had been done, and sworn by those Princes and their People; it manifests that League to be founded in something, to which I forbear to give its proper Appellation.

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Indeed, *Balliol* had set an unfortunate Pre-
 sident for his Successors, not only in the Event
 above, but the Judgment of his best Friends,
 the Pope and the King of *France*; That he being
 a Vassal to the King of *England*, could make
 no Alliance; and therefore could not be in-
 cluded in a Treaty of Peace, in the Word *Allies*
 of *France*.

ad Letter
 p. 12.

C H A P. XXXIII.

*The Fifth, Proving the Continuance of the
 Superiority and direct Dominion of the
 Crown of England over the Kingdom of
 Scotland. According to the known Rule
 of Law.*

I Cannot but here observe how miserably such
 Pretenders to the knowledge of Antiqui-
 ties as *Sir Thomas Craig*, impose upon whole
 Nations, and lead them to believe what makes
 for their Purposes.

By the help of such Guides, the Community
 or Parliament of *Scotland* in the 13th of E. 2.
 assur'd the Pope, they knew and Collected
 from the Acts and Books of the Ancients, the
 very Year when they were first Possess'd of their
 then Seat, that just 1200 Years after the
 People of *Israel* went out of *Egypt* they came
 hither from *Spain*, that having driven out the
 Britons and *Picts*, they ever preserv'd them-
 selves free from Servitude, and had hitherto
 dwelt free and quiet, till that Magnificent
 Prince, King of the *English*, *Edward*, Father of
 the

Second Vol.
 to the Hist.
 of the Reformation Ap.
 R 109. Lit-
 tura origi-
 nales per
 Communica-
 tem sequitur.

the then King, innumerable Infested their Kingdom without an Head, and a People conscious of no Ill or Deceit, and then not accustomed to Wars or Insults.

They surely, being then Papists, thought the Pope could give them a Dispensation to say any thing; or at least, if he werewell pay'd for his Bull, would Anathematize all who held the contrary.

That both before and since, the Kingdom of Scotland was subject to the Crown of England, and that it has been amply Recogniz'd within time of Legal Memory, has been prov'd at large.

And however many Considerations may Evince, that much longer length of time than Homage, in evidence of their Subjection, has been thought discontinu'd, could not be enough to discharge it.

1. *Nullum tempus occurrit Regi.* "No length of time prejudices the King, is a known Maxim, which tho' it admits of Qualifications, there being some Privileges to which a Man may prescribe against the King, yet all will agree, That this could not affect the chief Rights of the Crown; especially, such an one as, according to what I cited out of Sir John Davis, even an Act of Parliament could not take away. Much less could any Prescription, which has its Force only from a tacit Consent of Prince and People.

Besides, continual Claim would preserve the Right, tho' the Duty had been much longer withdrawn.

1 Just. 57 b. Whatever private Persons may lose by Laches or Neglect, this shall not be imputed to the King.

The

The old Mirtour says,

"As to Alienations and Occupations of Mirr. cap. 9. Sect. 26
Franchises reall appendant to the Dignity of the Crown, there can be no Voucher to warrant nor demand of View, nor Title of Prescription of time: For as to such *Dignities* no Man can be aided by exception of long time; but such Avowries of long continuance are to be accounted *continuance of Wrong*, rather than Legal Exceptions.

Suitable to which *Briton*, who writ in the Briton. 88. p. 88.
 Name of E. 1. says,

Nul temps est limit "No time is limited, quant a mes Droits. "as to my Rights.

To Cite the Moderns to this purpose, would be endless.

2. Further, if this were Matter to be affected by Prescription, it ought to have been from the Rolls Abittit. profer. p. 1. 159. n. 2.
 beginning of the Reign of R. 1. for all his Reign is in the Eye of Law, within time of Memory

3. *Homage*, which is the Service perform'd in Testimony of the Subjection of the Kingdom of Scotland, not being Annual, cannot fall within the Rule of Prescription, neither is it within any Statute of limitation of Actions.

This appears by *Becil's Case* upon the *Stat. 31. H. 8. c. 2.* which Enacts. Bevills. c. 4. rep.

"That no Person shall make any Avowry or Cognizance for any Rents, Suit or Service, and alledge any *Seisin* of any Rent, Suit, or Service, in the same Avowry or Cognizance, of his, or their Ancestor or Ancestors, Predecessor or Predecessors, or in his own Possession, or in the Possession of any other whose Estate he shall pretend or Claim to have,
 A 2 2 "above

"above 50 Years next before the making of the
"said Avowry or Cognizance.

Upon this 'tis Resolved,

F. II.

"That *Homage* and *Fealty*, and other such
"Accidental Services, altho' they become due
"within the time limited by the Act, and by
"the Laches of the Lord no *Seisin* is had of
"them; yet he may distrein for them when he
"will, for they are not within the Purview of
"the Act.

"Tis there observ'd, that a Tenure may be by
"Homage and *Fealty*, and yet they shall never
"be done to the Lords.

"As if Land held by Homage and *Fealty* be
"convey'd to a Mayor and Commonalty or other
"Corporation aggregate of divers Persons, in
"this Case they hold by Homage and *Fealty*, yet
"can't do them. And therefore tho' they should
"have enjoy'd the Land above 60 Years; yet if
"they alien the Land, the Lord may distrein for
"the Homage and *Fealty*.

"Tis further shewn to have been agreed at
"H. VI. 22. a "That in a Writ of Escheat or Cef-
"savit, the Demandant does not alledge *Sei-*
"*sin*; and the reason is, that he claims the
"Land by reason of his Seignior, and not by
"any *Seisin* in him or any of his Ancestors.

The Instance above of Land held by a Cor-
poration which could not perform Homage,
sufficiently refutes the Imagination which pos-
sesses some, as if there were a Merger or Ex-
tinguishment of the Homage, by the Crown of
England's coming to a King of the *Scots*.

Besides, as was resolved in the Case of Prox-
ies.

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"multis an
"Scotte Se
"Anglia R

"Things which are not issuing out of Land, Davis's Rep: F. 5.
 "as parcel of the profits of Land, but are deriv'd
 "otherwise, and due in other respects, altho'
 "they be taken and had within certain Land, yet
 "Unity of Possession shall not extinguish such
 "things, of which nature are all Franchises, &c.
 "Again, "Altho' a thing be part of the pro-
 "fits of Land, and payable by such Person
 "only as has the Land, yet if it had its Com-
 "mencement or Original for any Personal re-
 "spect, and not in respect of the Land, and so
 "the Person only is chargeable; such things
 "shall not be subject to Extinguishment by uni-
 "ty of Possession.

And however if *Homage* would not fall within those Rules; yet all that could follow from it, would be, that the Kingdom of *Scotland* being annexed to the Crown of *England*, could not be Granted out again, because as Sir T. C. has observ'd there would have been a Consolidation of the Fee; but this would be far from freeing the People of *Scotland* from Subjection to the Crown of *England*.

It appearing, that King *James's* having the Crown of *England*, was no prejudice to the Right of the Crown; let's see how the Right stood immediately before he obtain'd it; and that in the Judgment of the best Advocate for the *Scots*, *Bishop Lesley*, who was greatly instrumental in influencing the Reception which their *James* the 6th had here. His words are these:

Et si autem, jam a multis annis, nullus Rex Scotiae Servitium illud Anglia Regibus presti-

"But altho' for Lestiers de Successions Jure p. 22.
 "many Years since no
 "King of *Scotland* has
 "perform'd that Service
 "to

terit; non est tamen
consequens, ex Anglor.
jure ideo Regnum Sco-
tia, tum cum prefata Do-
mina Maria Scotia Re-
gina Nata esset, qui fuit
annus regni Henrici
Octavi tricesimus quar-
tus, extra Dominium
Regum Anglia fuisse,
nullamque illis obedi-
entiam debuisse. Sic e-
nim Anglorum leges a
parte dicunt, si tenens
debitum servitium præ-
stare Domino recuset,
non ideo tamen Domi-
nium suum amittere e-
um qui Dominus est, sed
fundos Nihilominus sub
potestate & Dominio si-
ve signoria, ut vulgo
aiunt, permanere.

Sed objiciet forte ali-
quis, per hanc eandem
rationem Galliam quo-
que dici regno Anglia
Subditam, quandoqui-
dem ante annos centum
& paulo amplius diade-
ma Gallia jure penes

“ to the Kings of Eng-
“ land, yet it does not
“ follow according to
“ the Laws of the Eng-
“ lish, that therefore the
“ Kingdom of Scotland,
“ when the said Lady
“ Mary Queen of Scot-
“ land was Born, which
“ was the 34th Year of
“ King H. 8. was out
“ of the Dominion of
“ the Kings of England,
“ and owed them no
“ Obedience. For thus
“ the Laws of the Eng-
“ lish clearly speak, If
“ a Tenant refuse to
“ perform the Service
“ due to his Landlord,
“ yet the Landlord does
“ not therefore lose his
“ Dominion; but the
“ Lands nevertheless
“ remain under his Pow-
“ er and Dominion or
“ Signiory, as they com-
“ monly speak.
“ But perhaps some
“ Body will object,
“ that also the King-
“ dom of France, by
“ the same Reason,
“ may be said to be
“ subject to the King-
“ dom of England;
“ since

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*Anglia Reges fuerit,
quorum adhuc jus &
titulus inconcusse apud
Anglos manet.*

*Ad quod responderi
potest, inter titulum
utriusque regni Gal-
lie scil. & Scotia, quem,
Sibi vendicant Reges
Anglie, latissimum dif-
crimen: Quamvis enim
Regnum Gallie jure te-
nuisse & Possedisse An-
glia Reges fateamur, tan-
diu tamen dum aliorum
occupatione a dicti reg-
ni Possessione excludun-
tur, illud horum Domi-
nio subesse nullo modo
affirmari potest; preser-
tim si hoc consideremus
quemadmodum, ex eo
tempore occupati illius
Imperii Gallie populus
a subjectione & obedien-
tia Anglorum Regum
prorsus descecerit, seque
totum occupantibus Gal-
lis dederit atque sub-
miserit. At de regno Sco-
tie longe secus est.*

“ since 100 Years be-
“ fore and little more,
“ the Crown of France
“ was with the Kings
“ of England, whose
“ Right and Title still
“ remains with the
“ English unshaken.

“ To which it may
“ be answer’d, that
“ there is a very wide
“ difference between
“ the Title of each
“ Kingdom, viz. The
“ French and Scotch,
“ which the Kings of
“ England claim to
“ themselves. For tho’
“ we should confess
“ that the Kings of
“ England did right-
“ fully hold and Pos-
“ sess the Kingdom of
“ France; yet so long
“ as the English are
“ excluded from the
“ Possession of the said
“ Kingdom, by the
“ occupancy of others,
“ It can in no wise
“ be said to be under
“ their Dominion; E-
“ specially if we con-
“ sider this, How from
“ that time of occu-
“ pying the Govern-
“ ment, the People
A a 4 “ of

Non enim in eo consistit titulus sive ius quod in regnum Scotia sibi Anglia reges arrogant, ut illud Possideant; sed ut pro eodem regno ipsis homagium seu debiti Servitii significatio exhibeatur. Quod etsi Scotia Reges Anglor. Regibus prestare jam inde a multo tempore intermiserint, non ideo tamen eosdem Scotia Reges recte & jure Usurpatores injustosve Possessores dixeris. Atque ita, optime lector, videre est judicium omnium cum equitate & absque ullo animi affectu Sentientium ex Anglor. quidem jure & Testimoniis Scotia regnum in-

of France, wholly withdrew from Subjection and Obedience to the Kings of England, and wholly gave themselves up and submitted to the French, who occupied the Government. But 'tis far otherwise concerning the Kingdom of Scotland.

For the Title or Right which the Kings of England claim to the Kingdom of Scotland, does not consist, in that the Kings of England pretend to possess the Kingdom of Scotland; But that Homage be exhibited to them for the same, as a signification of the Service due. The performance of which, altho the Kings of Scotland have now for a long time intermitted, yet you cannot therefore Rightly and with Justice, call the Kings of

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*fra Dominium Angliae
homagio prestando ob-
noxium & olim fuisse &
ad huc etiam esse.*

“ of Scotland Usurpers
“ or unjust Possessors.
“ Therefore good Rea-
“ der, you may see that
“ in the Judgment of
“ all who think with
“ equity and without
“ any partiality, even
“ according to the Law
“ and Testimonies of
“ the *English*, the King-
“ dom of Scotland is
“ adjudged, by doing
“ Homage, both of
“ Old to have been,
“ and still to be, with-
“ in the Dominion of
“ *England*.

“ All but his unprov'd assertion, That it would
not follow that the *Scotch Kings* were *Usurpers*
in setting up for *Kings*, without doing *Homage*
for *Investiture*, is so apposite to the purpose for
which I cite it, that it might seem writ by an
English Lawyer, upon the present Controversy;
and is so plain, that it needs no additional
light.

CHAP.

C H A P. XXXIV.

The great Occasion of enquiring into the Nature of the Succession to both Crowns. That Sir T. C's Admirers, particularly the Jacobites, have as much reason to except against his Authority as others.

HAVING formerly shew'd, by Records and Histories from the beginning of the *English* Monarchy, demonstrative Proofs, that the late *King William* of Glorious Memory, was King of Right as well as in Fact, fully justifying the present Act of Settlement, I should not here concern my self with the Nature of the Succession, did not *Sir Thomas Craig's* way of managing the Controversy about the Homage, and his admired Treatise of the Succession, make it necessary.

Of homage
P. 374.

As I had observ'd before, he held, That the Kings of *Scotland* possess'd it at the time of his writing, by a *much better Title* than the *English* possess *England*.

P. 418.

In another place he says of *Scotland*.

" For almost 2000 Years, the next of the Blood did constantly succeed in a continu'd Series.

P. 425.

And before, he had ascrib'd to the King of *Scotland* a Title to the *British* Monarchy, as *Walter*, the first of the Family of the *Stewards*, was descended from the Race of the *Welsh* Kings, which he will not allow to our King *H. 7*.

P. 463.

Then as to the Title of our *Saxon* King, *Edward the Confessor*, *Sir Thomas* supposes, he usurp'd

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surp'd the Crown by the Assistance of the Normans, against the Laws of England; seeing he was not of the full Blood.

As to William, he all along takes him to have came to the Crown meerly by Conquest, and in Right of a Conquerour; upon which *Postulatum* he says.

' We must inquire if there was any Homage due of homage from Scotland to the King of England, to whom P. 261.
' it ought to accrue after the Conquest, whether
' to the true Heirs of their former Lord, or to
' those who succeed him by Force and Arms:
' for the English themselves will not say that
' Force and Arms, do either give or take away
' an other Man's Right.

In his Treatise of the Succession, he supposes Of Success
England to be an Hereditary Kingdom, that is, t. 132.
according to the whole Scope of that Book, to
the next in Blood, handed down by Queen Elizabeth's Ancestors for above 2000 Years.

' By the Custom of Succession to the Crown t. 279.
' of England, he says, the next in Blood, where-
' ever Born, was always received, as readily as if he
' had been Born in England, and this shall be fully
' made to appear by constant Use and Custom:

But if it be the Fundamental Constitution both of England and Scotland, that the next in Blood ought always to be received, this will evidently militate against that Title which both he and Sir George Mackenzie have contended that no Act of Parliament could set aside: and if they be right in their Notion, as will appear when I come to consider the Scotch Succession, it will carry the right to another Family, as well as be a weighty objection against the Annexation of the Crown of Scotland, or Devolution

volution of that Kingdom, to our Imperial Crown, by Reason of the accession of J. 1. to it.

Vid. Pref.

I doubt not but if the true Publishers of Sir Thomas Craig's Book appeared, they might be known to be Men who have not taken the Oath of Allegiance to her present Majesty, and if they believe the pretended J. 3. to have been the Son of the late King James, or of his Queen during the Coverture, may think Sir Thomas Craig's Reputation may serve for Reason and Authority: and having him they think on their side, may slight any Confutation of him as the best way to answer what they are resolved to oppose, in spite of all conviction.

Jovian.

Nor indeed, are such Men's scruples to be satisfied, till the Power of France, which raises and supports those Scruples, is abated.

Even Dr. Hicks, the most Learned of the Nonjurours, has agreed that the Divine Right follows upon, or is inseparable from the Civil: but as my Business is with *magni Nominis umbra*, the shade of a great Name, conjured up to raise new Storms, I shall do my endeavour to lay it.

The Dedicator says,

"Sr. Thomas Craig, was perhaps the best
"qualified of any Man in that Age, for such
"an undertaking; being a Man of Universal
"Learning, great Judgment, Observation, and
"Experience, and having so thoroughly stu-
"dyed the Divine Laws, the Laws of Nature
"and Nations, as well as the Civil, Canon, Feudal,
"and Municipal Laws: Such were the Foun-
"dations upon which he rais'd this noble Super-
"structure, so closely compacted together with

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" the utmost strength of Reason, and Embellish'd with all History, *Sacred* Ancient, and Modern. He knew well both to overthrow the *Deceitful* *Fabricks*, which his Adversary had rais'd upon the Sand, and to build upon a Rock with suitable Materials.

I am no more concern'd for his *Adversaries* Notions than his; but shall shew his *Fabrick* as *Deceitful* as the *Jesuit Parsons's*.

In the mean while cannot but observe, how these Men are put to it for Authorities, when they set up one as *Sacred*, which they themselves must as much condemn; if they are not made up of as strange and *Heterogeneous* a composition, as their *Oracle*.

Sr. Thomas, taking notice of Doleman's Objection against the Union of *England* and *Scotland*, because in the latter, there are neither *Bishops*, nor *Arch-bishops*, nor *Deans*, *Archdeacons*, nor other such *Ecclesiastical Dignities*; says, " I am much of St. *Ferome's* opinion, " That those *Dignities* were first *Invented* by " the *Enemy of Mankind*, and introduced into " the Church for cherishing *Pride*, *Ambition*, " *Contention*, and *Riches*: for *Ferome* thought, " that the *Name Priest* was sufficient alone, " (and I think he was a little wiser than my Adversary,) as at this time many think the " *Names and Offices of Ministers* in the Church, " are enough, seeing every *Minister is a Bishop* " in his own Church.

His *Admirers*, and particularly the *Dodwellian Jacobites*, must needs exclaim against him in this matter: and I may well ply one *Jacobitish* Authority, against another: For Mr. *Dodwell* concludes the *Body of the English Nation*, to be in a State

Of Success
6 358.

State of *Schism*, for which he wisely appeals to the *Popish Bishops*, because a few of our *Prelates* were depriv'd in virtue of an Act of *Parliament*, or rather chose not to qualify themselves for holding their *Baronies*: on the other side *Sr. Thomas* accounted them none of God's Creatures but the *Devils*. The *Hicksians*, will be as loath to receive for Gospel all that *Sr. Thomas* says in relation to civil Power, and the right of Succession to it: not but that according to his usual Inconsistencies, some of his *Postulata* might please them very well, did he not effectually overthrow them.

A great Argument for the uncontrollable Power of Kings, particularly in *Dr. Fern* and *Salmasius*, has been from *Samuel's* describing the *4th jus Regis*, 1. *Sam* 8. 11. &c. as such Authors hold, the rightful manner of the King, That "he shall take the Substance and Effects of private Men, yea their Children and Vineyards, and give them to his Servants, as he should think fit. According to which *Dr. Hicks*, with his well contrived distinction between the *Imperial Law*, which gives all to *Cesar*, and the Political in which the King condescends to some ordinary Rules of Government, has held and not publicly retracted, That *Subjects are and ought to be Slaves*, if the King pleases; and having Enumerated the Rights, of a *Sovereign Prince*, among the rest, to have the *Legislative Power*, or the Power that makes any Form of words a Law, he says, In all *Sovereign Governments* Subjects must be *Slaves*, as to this particular, they must trust their Lives and Liberties with their *Sovereign*.

* Vid. *Dr. Fern's* Reply to several Treatises. P. 83.
It is the *jus Regis* which most Authors acknowledge. & *Salmasius* contra *Miltonum*.
Sr. T. C. of the Succession F. 85.
Jovian p. 245.

But

‘ But then he tells us the *English Realm* is a
 ‘ *perfect Sovereignty or Empire*, and the King,
 ‘ of England by the *Imperial Law* of it, is a
 ‘ *complete Imperial and Independent Sovereign*,
 ‘ to whom the *foresaid Rights of Sovereignty* do
 ‘ *inseparably belong*.

Thus the *English* are Syllogistically prov’d
 Slaves, and the *Lords and Commons*, if this be
 according to the *Divine Law*, ought to give up
 all pretences to any share in the Legislature.

But *Sr. Thomas Craig*, like a rank *Presbyterian* as he was, differed mightily both from
Dr. Fern and *Dr. Hicks*, and other new mo-
 dellers of Governments, by an Imaginary Pat-
 tern from the Mount.

‘ *Sr. Thomas* is positive, that *Samuel* in that F. 18.
 ‘ place does not set down the *Laws and Rules*
 ‘ of Government, but only foretells what would
 ‘ fall out under Kings, to wit that the People,
 ‘ *should in vain Cry to God, whom they had for-*
 ‘ *saken*, for help, when they came to suffer
 ‘ such evils and calamities from their Kings.

Where he too plainly Insinuates, that the
 People of *Israel* in their chusing to have a
 King *forsook God*.

Before that he had sayd.

‘ When God ordaind a Form of Government
 ‘ for his People, and gave them his Laws by F. 9.
 ‘ *Moses*, among others he also gave the Law,
 ‘ and declared what the manner of the King
 ‘ should be, that should be set over them.

Not here to enquire what Form of Go-
 vernment God Ordain’d, the manner of their
 King when set up, may appear from that
 of *Deut. 17. v. 14. 15. &c.* mention’d in F. 19.
 Sir

Sr. Thomas his Book, which requires the Jews to set but King over them, whom the Lord should chuse from among their Brethren, but no Stranger. Their King was not to Multiply to himself Horses, nor Wives, nor great Treasures of Gold or Silver, and when he should sit on the Throne, he was always to have the Law of God before his Eyes. Sr. Thomas says further, God is pleas'd to appoint the King what he was to do, and what he was to avoid, that he may prolong his Days in his Kingdom, and his Children.

F. 97.

The Law of Moses to the Jews, he looks on as a Divine Law to other Governments: and after mentioning our Obligation to attend to the Divine Law, in England especially, which he says is Properly called the Kingdom of God, he adds.

Neither are the examples which we are to bring as propos'd to us by the Divine Law, unless they be found to be inconsistent with the general Rule and Analogy of Faith, to have less weight than those things which are expressly commanded us.

Where, with one of his usual Absurdities, he supposes that examples may be propos'd to us by the Divine Law, which yet are contrary to the Analogy of Faith.

He says, God made Saul's Kingdom to last only for his Life, and would not suffer it to descend to his Heirs, by way of Punishment, and for his Transgressing the Commandment of the Lord

Further he says, in the Kingdom of Israel the People advanced Kings upon the Death of their former Kings. Again in the Kingdom of Israel we hear of nothing but continual Butcheries, Plots, and Conspiracies among the People.

Does not therefore his Rule Authorize not only

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only the taking the Crown from *Saul's* next Heir, but the little or no regard paid to Proximity in the Kingdom of *Israel*. Admit, for Argument sake, that the Children of *Israel* had not the least regard to the *Royal Family*, but as they were to take one from among their Brethren, had set up one of the meanest of the People, lets see whether *Sr. Thomas Craig* does not find out a *Divine Right*, for him: "The saying of *Hannah* the Mother of *Samuel* is of all other Testimonies from Scripture, the most clear and manifest, *Sam. 2.8. The Lord raiseth up the Poor out of the dust, and lifteth up the Beggar from the Dung-hill, to set them among Princes, and to make them Inherit the Throne of Glory:* and she Subjoyns a Reason, because the Pillars of the Earth are the Lords

That most Religious Woman says he, acknowledged that it was by the Institution and Blessing of God, that Kingdoms were *Mereditary*.

But see how eagerly Men catch at a Word, that seems to make for them, without regarding more than the Sound. For,

1. If this had been a clear Expression of what were otherwise doubtfull, the doubt must needs have still remained; since 'twas only the Expression of a pious Woman, not deliver'd as any inspir'd Doctrine.

2. But what is most remarkable is, that according to the manifest import of it, when the Crown is removed from one Family to another, how mean soever the new King may have been, if the Inheritance of the Crown be continued to him and his Posterity, or to Successors for whom he has acquired a right, this is of God:

He makes them to *Inherit the Throne of Glory*, and they become Pillars of the *Earth*, not to be shaken, till God either for their own Sins or the Sins of a murmuring and ungrateful People, think fit to remove them.

This Text therefore I may, under *Sr. Thomas Craig's* authority recomend to the consideration of all who oppose the Act of Settlement, and the submission to it, required by God of the Subjects of *England and Scotland*.

To shew further why the *Jacobites* must renounce the authority of *Sr. Thomas Craig*, for a *Presbyterian and Republican*, I must desire them to consider this passage in his admired Treatise.

F. 401.

' Seeing that from the Laws of the XII Tables, which took the name of the most Ancient Law, it is provided that *Salus populi suprema lex esto*, that is, *let the Safety of the People be the Supream Law*; All our Cares and all our Endeavours ought to be directed to that End, neither ought such Inconveniencies as *use to happen*, tho' rarely, be so much minded, as those things which concern the Safety of the State and of the People.

This Rule indeed he applies only to answer the *Inconveniencies*, likely to be, and which have often happened upon naming the Successour to the Crown, in a Prince's Life time, upon this rule he contended that it was necessary, Queen *Elizabeth's* Successour should be nam'd, the States of the Kingdom pressed it; but that wise Queen doubtless for Weighty Reasons declined it, such a Declaration not being so absolutely necessary, as the Exorbitant Power of *France* supporting a Competitour, contrary to the solemn Treaty

Treaty of peace, had lately render'd it.

But as Sr. Thomas Craig has received the Law of the XII Tables, as the Law of Nations in that particular, it may appear that where the case concern'd his own Country, he has pursued the *Maxim* in its utmost extent.

Granting, says he, that the Prince has sworn to the Commonwealth and to the People, I would have *Doleman* to distinguish the Commonwealth, from all the single People in it.

If the whole Commonwealth, or any particular Person, hold a Fief of their Superiour Lord, that Commonwealth or whole Community, is bound to that Superiour, and the Lord to that Commonwealth, and yet what is done to the Commonwealth, is not sayd to be done to every particular Person in it. Neither, tho' every single Person has offended against the Lord of the Fief, has the Commonwealth offended, unless it be sayd that what was done was by Common Council and Advice; neither, tho' the Superiour had wronged one, two, three, ten, or twenty, in a Commonwealth, can he be sayd to have wronged the Commonwealth, or that he loses the *jus Dominii directum*, his Superiourity: we know that by the Feudal Law, the Lord of the Fief loses his Superiourity, or *Dominium directum*, for the same Offences for which a Vassal forfeits his Fief, if the Vassal offends against his Lord. But here the King is Lord or Superiour, the Commonwealth or Community is *Vassal*, or instead of a *Vassal*.

Wherefore tho' the King has offended many

' wicked Persons in it, has oppress'd or kill'd this
 ' or t'other Man, taken away their Effects, or
 ' polluted their House, he cannot be said to
 ' have transgressed against the Community, or to
 ' have violated or wrong'd it. Neither does a less
 ' number, as they say, make the *Common-wealth*,
 ' neither can the Faults committed against single
 ' Persons, be drawn to the Body of the *Common-wealth*.

One would think, here were enough to stop
 the Mouths of all *Non Jurants*, and to justify
 the disowning *King James*, upon the several
 Breaches of the Original Contract between the
 Prince and Community of *England*, enumerated
 in the Bill of Rights.

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 Sef. 2.
 cap. 2.

He manifestly looks upon the Community as
 a single Person Contracting with the Lord of a
 Fief, and agrees, that the Lord not performing
 his part, loses his *Seignior*y.

Nor is this bare Implication; for he is posi-
 tive, that this may Rightfully be.

He adds,

F. 202.

' But *Doleman* will insist, Cannot a Prince
 ' offend so against a *Common-wealth*, that he
 ' may be *lawfully and deservedly renounced*, and
 ' Disclaim'd by the *Common-wealth*? I Answer,
 ' That as long as he continues a *King and Sovereign*,
 ' he cannot. *Nevertheless*, sometimes
 ' there may be a Case, in which a King may de-
 ' servedly be *Disowned by the People*: As, if he
 ' make a *Free and Independent Kingdom* to
 ' hold of another, as *John Baliol* made the
 ' Kingdom of *Scotland* Subject to *England*.

Here is as much as need be urg'd, to justify
 our late *Revolution* and *Act of Settlement*; since
 he admits there may be Cases in which, accord-
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ing to the *Confessor's* Law, and the Learned Mr. *Falkner's Christian Loyalty*, a King ceases to be a King, and may well be renounce'd and disown'd, as he renounces that Authority which God has given him. Vid. Falk-
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Yet to see the Partiality of Writers, tho' Sir *Thomas* will have *Baliol* to have lost his Right, for paying that Homage to the Crown of *England* which was manifestly due; he will have it, that King *John* might be pardon'd or excus'd for making *England* Tributary to the Pope.

However, the *States* of the Kingdom and the then King of *France* rightly judg'd, That thereby the Throne became *Vacant*, and the Administration during the Vacancy, fell to the Peers. Vid. Mar-
Par.

CHAP. XXXV,

The Absurdities and Inconsistencies of Sir Thomas Craig's Notions of Government, and the true Result from them.

IN this Controversy, says he, concerning *Monarchy*, our first Enquiry shall be concerning its Institution; and we contend, that *Monarchy* is of Divine Original, ordain'd of God, and that no other Form of Government obtain'd among his peculiar People; that no other is so agreeable to the Laws of God and Nature. Yea, moreover, I undertake to prove that it has been received by the constant Practice of all Ages, and the perpetual Custom of all Nations.

B b 3

Now

Now would any believe that this great Man would overthrow all this in the same Breath; but his very next Words are;

' To begin then as we ought, with the Law of God, who is Infinitely Wiser than Man: We find it Recorded in Holy Scripture, *In those days there was no King in Israel, but every Man did that which was right in his own Eyes.* Which words, says he, import what a Disorder and Confusion of all Things and Ranks of Men, obtain'd among the People, untill God was pleas'd to establish Kingly Government in *Israel*.

Is this to begin like such an able Builder as he is represented, instead of laying a Foundation in the Primitive Institution, to shew the Consequence of a late Appointment?

Besides, had he not sayd immediately, before that no other form of Government, but Monarchy, had obtained among his People, and this had been the constant Practice and perpetual custom of all Nations, when yet himself shews that it was not so at that time with God's peculiar People, and that God did not please to establish Kingly Government among them till afterwards.

By what I cited out of him above it appears, that he would have Kingly Government to have been a Form appointed by God's Law delivered by *Moses*, when yet of his own shewing it was only the *Manner* of the King, whom they should set up, when they should, as *Sir Thomas* intimates, forsake God in shaking off the *Theocracy*, accordingly as *Samuel* foretold the Consequences, and God afterwards declared, *he gave them a King in his wrath.*

I had expected from him a formal Assertion of that *Patriarchal Power* which Sir Roger Filmer had set out with all the advantages that a good Style could give Palpable Contradictions, and which the acute Author of two Treatises about Government, has Answered too fully to be Reply'd to but he seems too admit that there was no King till after the Flood; not pretending to give any Authority but *Plato*, whose Treatise of a *Common-wealth* is diametrically opposite to him.

The First King he agrees to have been *Nimrod*, the great Grand-child of *Noah* by *Cham*, and that *he was made King by a willing and uncompelled People*: Tho' most People, he owns, reckon him the first *Tyrant*. F. 7.

Where he manifestly places the first Right to *Kingship* in a *voluntary election*, and that to the prejudice of the supposed *Patriarchal Right*, not only of *Noah's* eldest Son *Schem*, but of the Eldest in his own Branch of *Noah's* Family. For *Nimrod's* Father was *Cush*; all that are mentioned as his *Lawful Sons* are, *Seba*, and *Chavila*, and *Sabbetha*, and *Rahma*, and *Sabthecha*; the Scripture adds, *Moreover Cush begat Nimrod, he began to be Powerful in the Earth*. Gen. 10. 7. 8.
Bib. Lat.

Where not being mentioned among the *Sons*, he seems to be got of an *Hand-maid* or *Concubine*.

To prove the Divine Law, Sir Thomas cites *Cicero*, who affirms 'That nothing can be more acceptable to God, than a Company or Assembly of Men combin'd together in *Society by Law*, which are called *Cities*. Neither, says he, can any thing else be meant by Building so F. 7.

many and so Considerable Cities as are mentioned in *Sacred History*, but that by his mean and Conduct, Men did first begin to incorporate into Societies.

Very good: thus far it might seem, that whatever Form of Government was agreed on at the first combining together into a Society, this, according to the Election of *Nimrod*, was an Original contract, acceptable to God, and Authoriz'd by him.

To proceed,

What else was a City then, but the Union of many Families under one Prince?

Gen. cap.
4 v. 16. 17.

Cap. 6. v. 2.

As if it were impossible a Society could agree upon an *Aristocracy*, or *Oligarchy*. However was there no City before the Flood? Truly it falls out unluckily, that *Cain* who was the first that separated from God's People, or as the Text is, went from the Face of the Lord, built a City, and call'd it by the Name of his Son *Canaan*, The Marriages of the Sons of God, with the Daughters of those Men, is plainly assigned for one of the causes of God's destroying all the Generations of Men from the Face of the Earth, except those which were preserved in *Noah's Ark*.

So that hitherto Sir *Thomas* has fell upon very unlucky Mediums.

Having no other Notion of a City but as under one Prince, he adds, 'As a Family was only a Company of Children, and others, under the Head or Master of a Family, who was the *Major domo*. Wherefore as the Multiplication of Children gave rise to many Families, who not agreeing well among themselves,

chose

chose one, to whom all the rest were to be Obedient, and by whom they were to be Govern'd in common; so they *made choice* of a robust and stout Man for their *Head*, as Hunters commonly are, who was capable to defend them by force against Violence and Injuries. Many of those Families combining together, grew into one Society or City, of which *Nimrod* seems to have been the first contriver.

To pass by the sacred Authority, that *Cain* had a City before him, consider the Monarchy as one City compos'd of several such as *Cain*, *Sir Thomas* manifestly founds it in *Election*. For,

1. In every distinct Family besides Children, he supposes *others*; they therefore not being in that Family in which Nature placed them, came thither by *choice*.

2. The Combination of several of these *Cities* or *Families*, into or under one *Monarchy*, is of it self a manifest *Choice*: they, out of an Opinion of a Man's being able to defend them, chusing to have him for their *Head*, rather than the *Head* of a *Neighbouring Society*.

3. As they judge for themselves upon what Inducement 'tis fit to enter into such a Society, they may *chuse* another, where Nature has well fenced them from dangers from abroad; and therefore some Man eminent for Wisdom may have been made King, for having proposed such a Regulation of the way of Living together, that all happily Unite in promoting the *common Good*, by which Plenty and Prosperity is secured to every one in particular. These Regulations being *Universally agreed* to, became

Latos

Laws, and hence the Proposers of them have been esteemed *Wise Law-makers*.

Some of them, like *Lycurgus*, may have divested themselves of Power for the good of all, and proposed such Participations, or rather Subordinations, as might be the most effectual means to prevent Competitions and Animosities.

Vid. Cicero
de Repub.

Hence arose the happy Constitution of the *English Monarchy*, which *Cicero* plainly saw in *Idea*, as the most perfect form of Government.

4. To pursue the Precedent of *Nimrod*, whom *Sir Thomas* agrees to have been the *first King* in the World: As he was chosen by a *willing and uncompelled People*, without regard to the Right of *Proximity* to the *Father of Mankind*, the Reason of *choosing* him, did not extend to his Son, unless he was of full Age at the Death of his Father, and of *equall Ability* to protect the People. Therefore till there came to be an express agreement that his *Monarchy* should go to the next of his Blood, there must have been some other Foundation than the *Natural Right of Birth*, contrary to which, and for a widely different Reason, *Nimrod* was made *King*.

F. 111.

Where then was any Attention to what *Sir Thomas* pronounces the *Voice of God and Nature*, That he who is next in Blood has Right to the *Inheritance*? He says indeed, *That it was upon these Terms, that their Children should succeed, that Kings acquired Kingdoms*.

What might arise upon an *Acquisition by force*, is of another Consideration, tho' in Truth his main Scheme, in Relation to the *English Government*

vernment, will appear Built upon the supposing
W. i. an absolute Conquerour, against which I
 have produced some Evidences, and shall as
 much as may be requisite, without yet produc-
 ing my Proofs at large, that he was in no re-
 spect a Conquerour over more, than those who
 opposed his Legal Title.

Sir Thomas says, ' No Tolerable account can
 ' be given why his Adversaries should allow F. 110.
 ' Hereditary Rights, or the Rights of Inheri-
 ' tance in the Successions of private Men,
 ' which they cannot deny to be deriv'd from
 ' Natural Right, and refuse it in the Succession
 ' of Kings; nor why the Royal Children or De-
 ' scendants should be Defrauded of the Just Re-
 ' ward of their Merits and Virtues, or of their
 ' Right to succeed them, more than private Men
 ' can be refus'd or defrauded of their respective
 ' Inheritances.

Here he goes upon a Supposition that he
 prov'd; which he no where does, That, for the
 next in Blood to Succeed to every Crown is a
 Natural Right; and that all Nations have giv-
 en such Rewards to the first of their Kings, that
 their Descendants, by the Fundamental Laws of
 the Kingdoms, were always to inherit in an unin-
 terrupted Series of Successions.

But 'tis to be considered,

1. What he proves to be the Natural Right
 of Succession in private Families.

2. As to Crowns.

He cites *Papinianus* and other old Civilians,
 to prove that the Inheritance of Parents is due to
 Children from Natural Right or Reason. F. 102.

Yet

Yet he agrees, that this Natural Right may be forfeited.

2. 98. 99.
Numb. 26.

But what is most unlucky, is, That the Rights of all the Sons that a Man has, tho' several at a time, he proves ordinarily to be equal. For he cites the Law of Succession which God appointed by *Moses*, upon the Case of *Zelophehad's* Daughters. *If a Man dye and have no Son, then shall they cause his Inheritance to pass to his Daughter. And if he have no Daughter, then shall ye give his Inheritance to his Brethren. And if he have no Brethren, then shall ye give his Inheritance to his Father's Brethren. And if his Father have no Brethren, then shall ye give his Inheritance unto his Kinsman, that is next to him of his Family.*

He shews further, from the 36th. Chapter, that the Inheritance was not to be Transferr'd from one Tribe of the Children of *Israel* to another. This, he says, is of the Nature of those Precepts which continually bind us. Upon this he observes, ' That this Law of Succession commands first, that when any Man dies his Children shall succeed him: And if his Inheritance be not to be divided, then his First-born, whose Right God always favours, shall possess it.

But is not so fair as to own, that according to this, the Inheritance was as much to be divided among *Males*, as among *Females*; as only one Son, and one next Kinsman is nam'd, so is but one Daughter: so that Son and Kinsman, stand for all Sons, and all Kinsmen in the same degree, as well as one Daughter, stands for all Daughters.

That this was the meaning is evident; unless we can suppose, the Divine Law different upon the

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the falling of the Inheritance to a Man's own, or his Father's Brethren : For these were to succeed as *one Heir*. And it appears, that there had not then been any distinct provision for the Elder Son: For afterwards it was declar'd only in one Case, that a distinction should be made between Sons in sharing the Father's Inheritance; and even in that Case, the Eldest Son was to have but a double Portion, which was when a Man had two Wives, one loved and the other hated: In that Case, it was provided, That the Affection to a Wife, whose Son was the Youngest, should not prejudice the merits of the Eldest.

*Deut. 21.
15, 16, 17.*

Besides, if the *Voice of God and Nature* had been so clear, as Sir Thomas supposes, that the first in *Blood* should have the *whole Inheritance*, how came it to be a Doubt which needed a Divine Solution?

Further yet, the Law that no Inheritance should go to one of a different Tribe, if of *perpetual Obligation*, as Sir Thomas contended that it is, was an effectual Bar to their *James's* succeeding by any other Right than the Declaration of the *States of the Kingdom of England*, unless the Right of Succession to Crowns be wholly different, and so fetch'd from an other Ground.

12. Tables

Having seen what work he makes with the *Law of God, and Nature*; let's see whether he's more happy with the *Law of Nations*, and the *Civil Law*, from which he derives *Succession in a Monarchy*.

7. 112.

Here in the first entrance he quits the *Law of God and Nature*: For he says, *Succession in a Monarchy is from the Law of Nations, and from the Civil Law*.

Cap. 24.

For

For the Law of Nations, he takes *Ulpian's* Definition, That which all Nations commonly make use of, or which is common to all Men among themselves.

V. 113.

Then he says, ' There is the same Reason for the Law of Nations, and the ancient Civil Law. Yet speaking of the *Roman Emperours* and the Kingdoms of *France*, and the *English Saxons*, he says, That it may be doubted whether Succession took place in those Kingdoms.

What is this but a plain Confession, that Succession in Kingdoms was not by the Law of Nations? for that which is not receiv'd by all Nations, is not within the Definition which himself uses.

F. 202. A
Prince may
be disown'd
407. Satus
Populi.

He says, ' In truth, during the Times of the *English Saxons*, the Form of the Monarchy was not well fix'd. The whole Progeny of the *Heptarchick Kings* is confus'd.

V. 220. 22. 7

Nay, he says, ' When the King dy'd leaving only Young Children to succeed, the next in Blood, if he was a Man of Courage, did now and then, and for some time Succeed, which was also done in *France*, and was most commonly practis'd among all the Northern Nations,

What is this but a Confession, that this was the Law of these Nations, to chuse a deserving Person of the Family before the Son of the late King, when he was held unfit?

But then he will have them forc'd to this by the necessity of War, which is a yielding, as much as can be desir'd, that all Rules of Descent ought to yield to the Necessities of the Publick, and have generally done so: And that the People, according to their several Customs, were

Judges

Judges both of the Qualifications of Persons, and the Necessities of the Publick.

'Tis worth observing, whether he is more fortunate in his Inferences from the *Civil Law*, of which it must be agreed, that the *Twelve Tables* were the Foundation, and the truest Transcript of the *Law of Nations*, being an abstract of the *Gracian* Polity transplanted to *Rome*.

He cites *Justinian* saying, *The Prator* fol. F. 109, following Natural Reason, decreed the Possession even of Goods to Children, *tho' they were set free from their Fathers Tuition*, contrary to the Law of the 12 Tables, that is contrary to Statutes and to the Civil Law.

Sir Thomas is express, that by the Law of the F. 113. 12 Tables, the Children of Sisters who were Married into another Family, and did not keep the name of the Grandfather, were not admitted to the Succession; which shews that for *James* the 6th of *Scotland*, to Succeed to the Crown of *England*, was contrary to the Law of the 12 Tables, and the Civil Law.

Further, by that Law continued downwards, all a Man's Children were as one *Heir*, and as Sir Thomas observes *Justinian* calls Children Successours of their Fathers Estate, by *Natural Right*.

This, as *Tacitus* shews, was the Law received among the old *Germans*, every Mans Children were his Heirs, and 'twill appear that the Law of *Hereditary Kingdoms*, in relation to the Royal Family was the same. F. 110.

However it will appear from Sir Thomas himself, that the Law of *England* differs from what he sometimes contends, and at other times denies, to be the Law of God, of Nature and Nations.

That

That all his Pomp of Authorities from Law of God, Nature and Nations, to which tacks the Civil Law of the Romans, does concern the Question of Succession to Crowns, appears by the Differences which he makes between the Rules of the respective Descendants.

1. Foreign Birth he supposes to hinder descent of private Inheritances, not of Crowns.

2. That private Inheritances may be forfeited but that the Right to Crowns cannot: accordingly, tho' he agree that "all Rights, Divine and Humane, all Laws, and Reason it self bar him from Succeeding, who acquires it by Crime, neither can a Son, who kills his Father or his Brother, in hopes of Inheriting after them, be admitted to the Succession, while they purchased with the horrid Crimes of Parricide or Fratricide; yet, because Men guilty of such Crimes, have been made Kings, and then could not be questioned for what they did in private State, merged in the Policy, it will have these Crimes to be no Bar to a Right of Descent.

3. A third difference he says, in the Succession of private Men is, that the Brother Succeeds not his Brother, nor the Sister to the Brother or Sister, unless they are of the whole Blood.

But we see it is otherwise in the Succession of the Crown. For tho' the Brother and the Sister be only of the same Blood by the Father's side, and not of the whole Blood, they notwithstanding Succeed to their Brother. Thus before the Conquest, the Sons of King Edward, which he had by several Wives, and by Concubines, Succeeded one to another,

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with *Edmund* Succeeded *Athelstan*, and after *Edmund* his Brother *Edred*. To *Edmond Iron-side* Succeeded *Edward*, tho' begotten by their common Parent *Ethelfred*, by another Wife, to wit *Emma* Daughter of *Richard* Duke of *Nor-mandy*: and lately *Queen Mary*, Succeeded *Edward 6.* *Queen Elizabeth* Succeeded *Mary*, tho' we all know they had different Mothers.

According to his way of jumbling together matters of a very different Nature, he here takes all these to have come in by a known rule of Succession, tho' he in his Treatise of *Image* had made *Edward* the Son of *Ethelfred* *Usurper*, because he was but of the *half blood*, nor makes any distinction between Successions by Virtue of Acts of Settlement, or present Elections, and barely by descent.

And 'tis evident that unless these Successions are by Virtue of Priour Settlements of the Crown, or immediate Elections, himself has condemn'd several of them in the Instance of the Confessor, to whom he here allows a Title as heir to *Edmund*; and yet his own Hypothesis smites an other objection, besides that of the *half blood*.

To prove the supposed undoubted Right of *James*, to the Crown of *England*, he says, it remains only to be enquired who dyed last that was duly Invested and Seized of the Kingdom of *England*, and who was the Lawful and next Heir to him.

But in the Case of the Confessor, he passes *Canute the Dane*, and his 2 Sons *Harold*, and *Hardicanute*, who had successively been duly seized, and tho' the Confessor was of the *half blood* to *Hardicanute*, he had Heirs of his whole

Blood which ought to be preferred, in Rules of Descent to Publick, as well as Private Inheritances, Sir Thomas observes several other differences between Successions to *Crowns*, and to *private Estates*, besides those mentioned above. Since therefore the Rules of Descent are different, so must the Ground of those Rules.

'Tis impossible that the *Law of God*, and *Nature*, should give a *private Inheritance* to one, and a *Publick* to another: therefore as the Law of God *Co-operates* with Nature, or the Law of Nature, to make a private Descent; so it must with some other Law or Rule, to make a Right to a *Crown*: and the Right which results from such a Co-operation, must be as Sacred or Divine, as that which is from God and Nature.

Sir Thomas speaking of the doubt, whether *Proximity*, or *Representation*, ought to have place in Succession to the *Crown of England*; says,

p. 310.

‘ But seeing this whole Question is about the Succession of the Kingdom of *England*, it is therefore to be determined by the Law of *England*, and the Custom of Succession to that *Crown*, whence we are to form our Judgments concerning the Right of Representation.

Where, after all the flourishes about the Laws of *God*, *Nature*, *Nations*, and of the *Romans*, he is forced to own that nothing but the *Law of England*, can settle Mens Judgments,

This Law then, if it have due regard to that which he owns to be the *supream Law*, the good of the People, is that which Induces on Occasions the *Divine Right*, and without that, especially contrary to it, there can be no Right.

The

The *Apostle* says, ἡ γὰρ ἐξουσία ἐκ τοῦ θεοῦ Rom. 13.
 θεοῦ. αὐτὴ δὲ ἐξουσία ἐξουσία, ὡς τὸ θεὸς τεταγμέναι εἰσιν. For
 there is no Lawful Power but from God, the
 Lawful Powers, or Authorities in being, are
 placed in their regular Order under God.

A certain Person, who seems since to have re-
 pent'd of many of his Arbitrary Notions, has
 argu'd, That this was meant only of Persons
 cloath'd with Power, and that these were Abso-
 lute: upon this supposition he agreed, that
 Usurpers were not God's Ordinance, meaning
 Persons who came into Government without Ti-
 tle; but suppos'd, that if they had Title to the
 Government, they could not be Usurpers of
 Power, or, as *Grotius* has it, in *partem non suam*
involare, violently seize a part which does not
 belong to them.

Finding that Scheme would not wholly suit
 his coming into the Government upon the *Revo-*
lution, that he might have the Credit of va-
 rying from avow'd Principles as little as possible,
 he professes he had occasion to retract nothing
 but his asserting, That Usurpers are not God's
 Ordinance. And thus he came in without giv-
 ing due Honour to a Government which Dignify'd
 him.

Some have found out another Scheme: For
 taking it for granted, that Persons once in
 Power according to a Rule of Descent, were to
 be look'd on as cloath'd with Authority from
 God, tho' what they exercis'd was not warrant-
 ed by Law (as if God gave any Authority other-
 wise than as co-operating with the Law) will
 have it that such are to be *Obeded* as Powers spo-
 ken of in the Text, *Passively*, tho' not *Actively*;

as if not doing what was enjoyn'd could be a Fulfilling the Law.

These gross Errors, I take to proceed from the want of due attention to the original Word, used in relation to the Duty of the Subjects; which, throughout that Chapter, refers to the *Tallicks*, or Military Discipline: according to which every one is to act in his due Order.

But the Subversion of the Ends of Government, is, as if a General of an Army turn his Cannon upon his own Men.

1 Pet. 2. 13.
14

And 'tis observable, that the same Word, which St. *Paul* uses to enforce Obedience to Authority, as coming from God, St. *Peter* applies to the Creature or Creation of Man; and tho' he manifestly takes Kings to be such Creatures; yet he requires Obedience to them for the Lord's sake; which shews, that God co-operates with the Act of Man which sets them up.

But how much soever Cobweb-Niceties have perplex'd what were otherwise very plain, from the time that God has given a Legal Establishment to any Power, it has become his Ordinance; till then, it was no Lawful Power, and not his Ordinance, or authoriz'd by him.

As the Person thus establish'd, is ascertain'd by a Divine Right, so is the manner in which he enjoys the Power, whether as a Dictator, to himself for Life Absolutely; or to him and his Heirs in a limited way both of Descent and exercise of Power; or without Limitation as to either.

Sir *Robert Filmer* and others, have confounded many with the indivisibility of Supream Power; and certain 'tis, that Power in the abstract

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tract is indivisible; yet the same undivided Power may, by mutual Agreement or, otherwise, be in different manners communicated to several, sometimes in the same manner.

Vid. Grot.
de Jur. e. belli
& Pacis lib.
modum ha-
bendi potes-
tatem.

There has been no less abuse of the Notion of *Co-ordinate Powers*, which many have carry'd so far, as to deny the Supremacy of the King; but take it in a proper Sense, as ordained by God, along with, or as well as the King; and, possibly, there may be no harm in it.

Governours or Rulers sent by him, have no Authority but what dies with him; but if there be any Power Ordain'd by the same Authority which set him up; that Power continues during Vacancies.

Thus whereas *Common-wealths* Men will have it a perfect *Anarchy*, when the Right of the Reigning Family determines; according to the judicious *Pufendorf*, by virtue of a double Contract, where the Fundamental Constitution is *Monarchical*, as in *England*, a *Monarchy* remains.

Vid. Puf.
de Interge-
nis.

Till the Representatives of the People can meet, the *Administration* is with them whom the privilege of Birth has made the first civil *State* of the Realm; and they as it has been here from time to time, upon occasion, direct Writs of Summons for *Conventions*: which prevents all that *Confusion*, which Sir *Thomas Craig* and others suppose unavoidable upon *Vacancies*.

Sir *Thomas* would be thought to argue, That while a Person once Legally Invested with Sovereignty is alive, there is no Case wherein the Government can be Administred otherwise than in his Name, and for his advantage and benefit; which I shall soon shew that he gives up.

But must first observe, that his Notion of the *Administration*, where he contends that it must always be under the Authority of the King from whose Hands it is removed, is of the like kind with the Notion of Dr. *Fern*, Dr. *Hicks*, and others of that Stamp, in their Distinction between the Power of a Prince, which they take to be not only Absolute, but enjoy'd in an Absolute manner, and the Exercise of that Power.

It must be agreed, that Absolute Power is not to be controul'd, and yet 'tis obvious, that it may be communicated to one, or more, under *Restrictions*, and those Restrictions tho' they cannot mingle with the Power, are so involv'd in the manner of enjoying it, that 'tis no otherwise in the Person but with those Restrictions, and limited to such an Exercise.

On the other side, as they ever beg the Question, and make the *Person* the Power, or will have the Power to be entirely and absolutely in the Person; they know of no Limitations, but what are Concessions of a single Person, and as they proceeded wholly from his Will, depend upon, and are controulable by it.

Dr. Fern.
p. 15.

Dr. *Fern*, from whom Dr. *Hicks* and others copy, says, ' If a Monarch limit himself to a Rule, reserving Power to vary from it when he shall see good Cause, he may thus stint himself in the Exercise of his Power, and yet remain Absolute.

Further, he condemns the Author of a Treatise of mix'd Monarchy for supposing, ' That such a *Monarch* must be radically, that is, originally invested with such a measure of Limited Power, and that he must have his Bounds or Limits of Power *ab externo*, and

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' not from the free determination of his own Will.

What is a Fundamental Constitution, 'tis certain, does not depend upon the free Determination of the Will of the Prince; this may and does in *England* limit the Power *ab externe*, and those Limitations according to the plain meaning both of *St. Paul*, and *St. Peter*, are to be obey'd for the Lord's sake: upon which account they become God's *Ordinance*.

Thus an *English* Monarch is of God's making; but a *Monarch* with *Dr. Hick's* Imperial Power, or *Dr. Fern's* Uncontroulable Will and Pleasure, is not to be found on this side *France*.

But to return to *Sir Thomas Craig*, how much soever he, in his *Altitudes*, agrees with these Advocates for Tyranny, he would have *Scotland* exempted from the Contagion. Indeed, he hardly any where goes to their heights: for where he seems most to restrain the Power of the *State*, he allows there are Cases in which they may, for a time, take the Administration from the King: Whereas according to them, it can't be rightfully without his Consent.

And whatever Shew of Reading *Sir Thomas* may make, to prove that a King may in no Case be wholly Divested of the Government, he shews 'twas not his settled Judgment: for he says,

' Sometimes there may be a Case in which a F. 202.
' King may deservedly be disown'd, as if he
' make a Free and Independent Kingdom to
' hold of another, as *John Baliol* made the King-
' dom of *Scotland* subject to *England*; for which
' Deed he was renounced by his Subjects.

Here

Here the Case is alter'd, the People have taken to themselves a Power to judge their King for this matter; and Sir Thomas Craig says, it has been *deservedly*.

If, therefore, they who obstinately stand out against the present Government had any shame, they would not urge such an infallible Authority, according to which the late King James was *deservedly* disown'd, and renounced, for endeavouring to subject England to the former Usurpations of the See of Rome; from which it had been free for no small time.

C H A P. XXXV.

*Of the Law of Succession to the Crown.
The Heads undertaken.*

I. *How it stood in the Saxon Times.*

HAVING demonstrated, That they who produce Sir Thomas Craig, to Colour their holding off from this Government, must renounce him; and that notwithstanding his Flourishes about the Law of God, of Nature, and of Nations, nothing but the Law of England can settle Mens Judgments of the Nature of the English Monarchy; and that this must be according to the manner in which Kings have been Seiz'd of the Inheritance of the Crown; I shall shew

1. What Right Seizin transferred to Heirs; and who were Heirs of this truly Hereditary Monarchy, according to the known Law, or received Rule in the Saxon Times.

2. That

2. That the Succession of *W. 1.* was according to that Rule, and without Colour of Conquest of the Kingdom.

3. That the old *Saxon* Fundamental Law of Succession has been continu'd downwards to this Day.

4. That the Succession to the Imperial Crown of *England*, carries that of *Scotland* with it by a Right more truly Divine and Unalterable, than that by which the Kings of *Scotland* have Succeeded in that Kingdom.

1. In order to manifest the Law of Succession, I shall as briefly as I can, give a faithful Abstract of what will appear to any Man who shall, with me, carefully compare Records, Histories, Law-Books, Charters, and Authentick Writers, from before the Fixation of the *Saxon* Monarchy, downwards.

Early in the *British* Times, as has appear'd from *Gillias*, no regard was had to any Royal Family; but they chose their Kings upon the like Inducements, with what made *Sir Thomas Craig's* first King, *Nimrod*.

The most ancient uncontested Authority of the *Saxon* Times, which is allow'd us even by the *Scotch* Writers, who have not been acquainted with our *Saxon Chronicle*, is the Venerable *Bede*, who Dy'd in the Year 735. He (a) speaking of the coming of the *Picts* into the Northern Parts of *Britain*, says, *The Scotch gave them Wives, on Condition, that upon any dispute of Title they should chuse themselves a King of the Female Stock of Kings, rather than of the Male.* Whereby it appears what was his Judgment of the Succession, where they have seem'd most fond of an inherent Right of Birth.

But

(a.) Bede.
lib. 1. cap. 1.
Ubi res veniret in Dubium magis de femine regum pro sapia quam de masculinis Sibi eligere.

But as to *England*, where a King has left

(b) *Lib. 3. three Sons* (b) *Bede* calls them all *Heirs*.

c. 24. an. 725.

Accordingly, he more than once mentions Brothers Reigning together, as (c) *Sigbert*

(c) *Lib. 4.*

c. 11.

and *Freda* among the *East Saxons*, while (d) the *West Saxon Kingdom* was Govern'd by several (d) petty Kings, in distinct Divisions.

(d) *1b. c.*

12. fufcepe-
runt Subre-
guli regnum
gentis & Di-
vifum inter
fo conuerunt
annis circiter
decem.

These Kings at that time were Tributary, or feudatory Kings, under the *British Monarch*, who seem'd then to reside in the *Mercian King-*

(e) *An. 730.*

Cart. Orig.
in Bib. Cor.

dom. In the Year (e) 730. I find King *Athel-*

balt, mention'd above, ftyles himfelf not only King of the *Mercians*, but alfo of all the Coun-tries which by the general Names are call'd *South Angles*, fubfcribing King of *Britain*. And the fame Year I find an *Offa*, who ftyles himfelf King of the *Mercians*, and alfo the other Nations wherever round about.

By reafon of the Inheritance of the Crowns belonging to feveral Sons of Kings, the Kings were fo numerous, that *Bede* mentions two Brothers Crown'd Kings even of the *Ile of Wight*. But when any were Conftituted Kings, to the fetting afide all the *Regnant Family* of that particular Kingdom, the Perfons fo Conftituted were, according to (f) *Bede*, Strangers, or Doubtful,

(f) *Bede*
Lib. 4. c. 26.
Circiter An.
685. per ali-
quod spati-
um Reges du-
bii vel ex-
terni difper-
diderunt, do-
nec legiti-
mus Rex Vi-
fred, &c.

by way of Diftribution from *Lawful Kings*. And yet all the Kings of the feveral Kingdoms were defcended from *Woden*, from which common Stock they all took their Qualifications for an *Election*; as afterwards the *West Saxon Kings* did from *Cerdic*; then from *Ina*; and after that from *Egbert*. But generally, I take it, regard was had to that Part, or Branch, of *Woden's Family*, which was the *Regnant Family* within that particular Kingdom, where one of that Branch

was

was advanc'd, according to that Charter of an
Offa, where he is styl'd (a) *King of the Mercians*.
 Descended from the *Mercian Royal Stock*.

(a) Mon.
 1. vol. f. 28.
 An. 764. c. 1b.
 vol. 1. An.
 762. 1b. vol. 1.
 alt. cart.

About which time I find two Kings (b) of
Kent, *Sigered* and *Eadberth*, Governing in
 Severalty. Those 'tis likely were Brothers, but
Eadberth, who became King of all *Kent*, upon
Sigered's Death, or Amortion, was (a) constituted
 King and Prince by the whole Country. This
 was above 60 Years before the Foundation of the
Saxon Monarchy was lay'd, (b.) by the *West*
Saxon King Ina. Tho' most of the Moderns, and
 many of the Ancients, lay it as late as *Egbert's*
 time; the *Confessour's* Laws received and Sworn
 to by *W.* the first, and following Kings, say of
Ina (c.) he was *Elected King* throughout Eng-
 land, and first obtain'd the *Monarchy* since the
 coming of the *English*, into Britain.

(a) Cart.
 Orig. in Bib.
 Col.

(b) An. 699.

(c) Leges
 Sti Edw.
 Limborch
 & Bib. Cor.
 sub. effig.
 Claud D.

(d) Cron.
 Sax. nuper ed
 cujus profa-
 pia oriunda
 est Cerdico.

(e) Malms.
 f. 7. quam
 successive
 sobolis pro-
 sapia.

(f) Non
 parum linea
 regie stirpis
 exorbitave-
 runt.

(g) Cron.
 Sax. p. 16. &
 17.

(h) Brom-
 ton Col. 770.
 Superpopu-
 lum & reg-
 num elege-
 rant.

(i) Spelm.
 conc. i. vol.
 f. 291. 292.
 Concil. Ca-
 chuthensele-
 gantium
 & panangli-
 cum An. 787

His qualification for an *Election* the *Saxon*
 (d) *Chronicle* places in a descent from *Cerdic*. But
 (e) *Malmsbury* assures us, he was advanced, rather
 for his *Merit*, than his being of the *Successor*
 or *Inheritable Family*; and that from him (f)
 to *Britic*, the Kings were far removed from the
Royal Line. That *Britic* was truly *Elected*,
 appears not only in his bare *Qualification*, from
 the (g) *Stock of Cerdic*; but as he was imme-
 diate *Successor* to *Kenwolf*, (h) elected upon the
 like *Qualifications*, and in whose *Reign* it was
 (i) *Ordain'd*, in a *National and Legantine Coun-*
cil, that no Man suffer the assent of wicked Men
 to prevail, but that Kings be lawfully *Elected* by
 the *Priests and Elders of the People*.

Where 'tis manifest, that [*Lawfully*] does
 not limit the *Election* to any other Rule, than
 what follows in that Law, viz. to avoid *Election*

ing

ing Persons born in Adultery or Incest: the Person Lawfully Elected, is there called Heir (b) of the Country: where [Heir] is plainly us'd in the sense both of the (c) civil, and of our (d) Common Law, for the Person that comes duely to the Inheritance: In this Sense all of the Royal Family that have been Elected Kings, have been held to Succeed by Hereditary Right.

And thus in Numbers of Charters in the Saxon Times, and after, private Inheritances are granted to Men, to leave to *what Heir they please*, to the Church and its Sacred Heirs; and to the Barons or Citizens of London, and their Heirs.

To *Brihtic* the first West-Saxon King, after the People's Right to *Elect*, had been declared by National Authority, (e) Succeeded *Egbert*, who derived after several degrees passed, from *Inga* *Ina's* Brother.

It may well be thought that *Egbert* was *Elected* with a consent no less full and Formal, than was held Essential to his grants of Lands, one of which was (f) *With the licence and consent of all his Nation, and the Unanimity of all the Great Men.* *Egbert* was alive in the Year 838, tho' Historians generally supposed him to have died two Years before. His Son *Ethelstan* the eldest, and *Ethelwolf*, were Kings in the Father's Life time: As I might prove by several Charters, but shall here mention but two, one in the Year (f) 827. where an *Ethelstan* Subscribes as Monarch of all *Britain*; (g) another *An. 836* where *Egbert* grants with the consent of his Son *Ethelwolf*, King of *Kent*.

In the Year (i) 838 *Ethelwolf* Succeeded *Egbert* in the Kingdom of *West Saxony*, by a manifest Election.

(b) Heres patr. 1.

(c) Fund. Const. 1. part. f. 80.

(d) Bra- don l. a. c. 29

(e) An. 800 vel potius 807.

(f) Cart. in Regist. Abbot. Bib. Claud b. cum licentia & consensu totius gentis nostrae, &c.

(g) Few Historians take notice of him: vid tamen Bib. Cot. Domitian 2, 8. Sax. & lat. which shews him to have been King of *Kent* *Surrey* and *Suffex*.

(h) Ovid Ecches. cant inter decem Script. col. 2220.

(i) Bib. Cot. Julius D. 2. l. 125.

Election and con Besid not at t the Wes Eldest S indefesit the Law by (a) others; Queen, to have the Wis Consort Consecr of the S more rig Of this * expre with him begotten been Ad their Co ceeded a mate He the Mo the Leg inheri Will of That was due what 2 Author engle, v (e) two lye, (b)

Election, his Eldest Brother *Ethelstan* being alive, and continuing the *Monarch* of all *Britain*.

Besides the Evidences above, that there was not at that time such a fix'd Rule of Descent in the *West-Saxon Royal Family*, as made the King's Eldest Son to be King, or to have a certain or indefeible Right to be King, may appear by the Law or Custom of that Kingdom, mention'd

by (a) *Affer*, and (b) *Nicholas* of *Gloster*, and others; not to suffer the King's Wife to be call'd

Queen, or to sit near her Husband: Which seems to have occasion'd the Ritual for the Consecrating

the Wife in *Consortium regalis thori*, for the Consortship of the Royal Bed. Till she was so

Consecrated, which was to be in a Convention of the States, or coming from it, she had no more right to the King's Bed than a Concubine.

Of this doubtless *W. 1.* was aware, when he express'd a desire to have his Wife Crown'd with him. Certain it is, that the Sons of Kings

begotten on Concubines, after that they had been Adopted, or Elected by the States, or with

their Consent, were always held to have succeeded as Rightfully, and to have been as Legitimate Heirs, as the Son begotten in Wedlock;

the Mother's being Queen, and by consequence the Legitimation of the Issue, and Capacity to

inherit the Crown, having depended upon the Will of the States.

That in *Ethelwolf's* time, the Word Elected was duely apply'd to English Kings, and upon what Qualification, may farther appear by an

Author of the Saxon time, who speaking of East-Engle, where *St. Edmund* was Crown'd King,

(a) two or three Years before *Ethelwolf's* Death, (b) Over this Province Reign'd the most holy

(a) *Vid Cart. Orig. in Bib. Cot. sod. 22. Egberts and Ethelwolf sitting together, both Kings.*

(b) *Mou. 1. vol. f. 195. An. 845. welding cal-le Britone.*

* *Affer* Men ending with the Life of King *Affer* f. 256.

(a) *Nic. Gloc. in Bib. Cot. Caligula A. ending with the Life of Ethelwolf.*

(b) *Ritua-le in Bib. Cot. Coronat Ethelradi & H. 1.*

(d) Ex antiq. Sax Nobili prosapia oriundus, &c. omnium Comprovincialium exgeneirs succensione.

holy Eadmund, Descended from the Noble Stock of the ancient Saxons, &c. who coming from Kings his Ancestors, being eminent for his Virtue, with the unanimous Favour of all the People of the Province, is not so much Elected, by reason of the Succession, or Inheritance of the Stock, as he is forced to Reign over them.

(a) Affer. Men.

Within this time Ethelbald, Ethelwolf's Eldest Son Reign'd in his Father's Life-time, and retain'd West-Saxony to his Share, whilst the Bigotted Father, having (a) withdrawn to Rome, tho' *Animo Revertendi*, was held to have Abdicated, and with much ado prevail'd with his Son, and the People, to let him be an Underling King, of an Inferior Kingdom.

(b) Cron. De mailros.
(c) Bradles introd. f. 359.

(d) Affer epistolahereditaria immo commenda totoria.

(e) Append. vitæ Alfredi.

(f) Ita hereditas Ethelwolffi Re. patris mei ad me devoluta est, per cartam inde consecram in concilio nostro apud Langedene.

(g) Ethelwerdi Cron. f. 479. Ordinati sunt filii ejus, &c.

(h) Cron. de Mailross. 143.

Besides other Objections to any Right of Descent from him, according to good (b) Authority his Elder Brother Ethelstan surviv'd: however one or more Acts of Parliaments in his Life-time, had provided for three Successions after him, as appears by the Will of his Fourth Son Alfred, made in the Presence, and with the Consent, of all West-Saxony.

That Will recites what (c) Dr. Brady calls Ethelwolf's Will; but was (d) a Charter pass'd in a (e) general Council; for Alfred is expressly that the Inheritance of King Ethelwolf came to him by Charter thereof, made (f) in a general Council at Langedene. Yet that Charter was but recommendatory to a future Election; for Ethelbert, who is not nam'd in Alfred's Account of that Settlement, was upon the Father's Death (g) Ordain'd King of several Kingdoms; and succeeded his Uncle Athelstan in (h) Kent.

Alfred's Will shews, that by the Parliamtary Settlement of the Crown, he was to be Part-

ner

ner in Power, when his Brother *Ethelred* should succeed: (a) For which, he appeals to the Testimony of all *West-Saxony*. Accordingly they are both represented (b) as Kings at the same time.

Alfred was *Ethelwolf's* Fourth Son; whichsoever therefore of his three Brothers left Sons, every one of them, according to the vulgar Notion, had Right to the Crown before him; and yet that great and good Prince, in the last publick Act of his Life, expresses a satisfaction in that Inheritance, which (c) God and the Princes, with the Elders of the People, mercifully and bountifully gave him.

That Will shews, that he had two Nephews then alive, *Athelm* and *Ethelbalt*, who were not regarded in the Succession; but (d) *Alfred* was upon his Brother *Ethelred's* Death, *Elected* by all who were not under the *Danes*.

To *Alfred* Succeeded his Son *Edward* by a manifest Election, having Cousin Germans of at least an elder House: (b) *Ethelbald* or *Ethelwold*, who was one of them, was a Competitor with *Edward*, and was *Elected* by the *Danes*.

Ethelwold, who himself Descended from *Ethelred's* Elder House, says of *Edward* (e) Indeed the then Successour of the Monarchy, *Edward*, Son of the above-mention'd King, is Crowned after him; he being of the Royal Stem, was *Elected* by the Nobility at *Whitsuntide*; One hundred Years being pass'd since his Ancestor *Egbert* had his present Dominion.

Where the right of the Regnant Family was laid in Prescription: But the preference of one Person before others in Election upon a Qualification from the Royal Stem.

(a) Append. Sup.

(b) Polycron R. Higdoc. f. 253. S. Dun. E. 125. 126. An. 872.

(c) Append. Sup. de hereditate quam Deus ac principes cum Senioribus populi Misericorditer ac benigne de derunt

(d) S. Dun. Ad Ducibus & Presulibus totius gentis eligitur & non solum ab ipso verum etiam ab omni populo adoratur ut eis preesset.

(e) Afferu Annales & Hunting.

(f) Vid. his Book dedicated to Maud Wife to the Duke of Flanders. M. S. in Bib. Cor. Et Edw. &c. ipse stem mace Regali & primatis electus

Edward's

(d) Mat.
West. f. 180.
Seldens notes
upon poly-
olb. f. 211. &
Ms. Lelandi
& Windover
Ms. in Bib.
Cot. So a-
greed by Sir
S. C. f. 220.
the necessity

of War with
the Domes,
forced them
to it.

(e) Croni-
cle Sax. p. 111.
Huntingdon f.
204. electus
est rex in
Merce. An.

944.
(f) Bib. Cot.
Vitel ID. 15.
vita S. Dun-
stani auctore
Osberno Do-
rob. edit. in-
ter Script.
sub Nomine
Anglie sacre
successit in Ju-
re fratris.

(g) B b. Cot.
Cloopat B. 13
alter aucter
vitefti Dun-
stani. Mox
proximus
heres Eadred-
us.

Edward's Son and Successor Athelstan was a Bastard, (d) tho' Dr. Brady would have the contrary believed from *Malmshury's* tenderness in the matter; least it should diminish that King's Glory.

The *Saxon(e) Chronicle* mentioning the Father's Death in *Mercia*, says, *Ethelstan* was elected by the *Mercians*.

Huntington says, in *Mercia*: whither they might have flock'd from other Kingdoms.

To *Athelstan* Succeeded his Father's eldest lawfully begotten Son, *Edmund*.

Tho' *Edmund* had Sons, *Eadred* (f) his Brother Succeeded: And that as an Author to those times affirms, in the right of a Brother.

And an Author of like Antiquity, whose Words are Transcribed by Authors since the reputed conquest, says, *The next Heir Eadred took upon him the Natural, or Hereditary Kingdom, by Succeeding his Brother*: where the Uncle is plainly accounted the next Heir fit to Reign.

And yet the *Enquirer*, and Dr. Brady, suppose, that *Eadred* was only Tutor, Curator, Regent, or Protector, of the Young Princes, and Kingdom.

Which was far from the meaning of that Ancient Authour, who blames *Eadwig* the eldest of those Princes, for pretending to Succeed his Uncle (g) before he had been *Elected*: tho' both with *Clergy* and *Lairy*, one *Elected* supplied the Numbers and Names of the *Kings*: That is, no Man was accounted King, who was not *Elected*; Speaks of the day of the common Election; what Authority the States exercised over him for his egregious folly on that day; and his being cast off by the Northern part of the Nation, because

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(a) because he foolishly Administred the Govern-
ment committed to, or entrusted with him.

He being forsaken by an (b) Universal Con-
spiracy or Agreement, they, says that Authour, the
Lord so dictating, Elected his Brother Edgar.

After Eadwig's Death, the same Authour
says, Edgar (c) took his Kingdom upon him, being
Elected by the People of both Kingdoms, as equal
Heir to both.

As an other (d) Authour has it, he was E-
lected by all the People of England.

To Edgar Succeeded his eldest Son Edward
the Martyr, who what ever many of the Mo-
derns, and some of the Ancients may have thought,
was undoubtedly a Bastard: Which is not only
shewn by an (e) Authour of the time; but is
confirm'd by the Brother Ethelred's Charter:
Which informs us that the Election of the States
preferred his Brother; as the Charter has it,

(f) The Great Men of both Orders Elected my
Brother King; and gave me Livery of the Lands
belonging to the Kings Sons: Which plainly
proves that Edward was a Bastard, the private
inheritance having fallen to the Father's Younger
Son: However, this is an undeniable Precedent
of an Election: and yet, for the reason above, it
may well be said that Edward was left (g) Heir
of his Father's Kingdoms, as well as Virtue: which
Historians, since the time of W. 1. transcrib'd
from one of the Writers of St. Dunstan's Life.

That Ethelred, who (b) Succeeded the Martyr
was truly Elected, appears beyond contradiction
by the (i) Ritual of his Coronation; which re-

(a) Quo-
niam in
Commissio
regimine in-
supererexit.

(b) Ib.
hoc, ita om-
nium conspi-
ratione re-
lictis, elege-
re sibi Do.
distantia &c.

(c) Ib. &
regnum ip-
sius velut
aequus haeres
ab utroq; po-
pulo electus.

(d) Bib.
Cot. Vitellius
t. 20.

(e) Osber-
nus Sup.

(f) Omnes
utriusq; ordi-
nis Optimates
ad regni
Gubernacula
moderanda
fratrem
meum Ead-
wardum
elegerunt
mihiq; ter-
ras ad regni
pertinen-
tes filios in
meos usus
tradiderunt.

vid. Dr. Bra-
dy's use of
this Introd. f.
360.

(g) Bib. Cor.
Regist. Mag

London: sub effig. Claud. b. f. 82. (b) An. 979. (i) Bib. Cor. sub Effig. Claudii
Ab Episcopis & a plebe electus.

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quires

(a) lb. Vo-
luntus &
concedimus

(b) Benedic
Domine hanc
pure electu.
Principem.
Sir Tho. of the
Success. 2. v.

(c) Domi-
rian. A. 8.

Sup. Firma-
tum est pa-

stum inter
Regem &

populum su-
um & firma-

amicitia: jure
jurando etiam

Statu-
tum est ut

nunquam
amplius esset

Rex Danus
in Anglia.

(d) An. 1015.
or 1016.

(e) Knigh-
ton. f. 232.

Mist. clame-
um. &c.

(f) Malm-
b. 139. Dani

Cnutonem
eligunt.

(g) Inter al.
vid. Angl.

Satr. Hist.
Maj. Winton

Cujusdam
ducis fil. no-

mine Algi-
yam accepit

in Concubi-
nam, ex qua

penuit filiu.
omnino Ed-

mundum T-
ronside. Et

Bib. Cor.
Cleop. B. 13.

De uno &
hominibus.

R. Angl. isto
erat Bastar-

us.

quires that the King *Elected* by the Bishops and the Plebs or Commonality, take his Coronation Oath: after the Oath taken, the People are solemnly asked whether they will have him to be King: answer (a) we will and grant; they pray to God and Bless his Servant, whom they have *Elected* King; and in an other place they prayed God to bless this (b) *purely Elected Prince*.

Sir Thomas Craig, having taking notice of this custom, one of his Nonjuring Editors finding it to confound his Hypothesis says, Note, this is a Vulgar Error, &c.

To this time the Danes possessed great part of England, and Swane, King of Denmark, land- ing with an additional Force: this with Ethelred's sloath and unacceptableness to his own People drove him to an Abdication.

Upon Swane's Death, the English invited back the Abdicated King, (c) on Condition he would Govern better than he had done: For which his Son Edward undertook. Ethelred returning, as an Authour who lived about the time has it, a con- tract was Establish'd between the King and Peo- ple, and firm Friendship; and it was repeated with an Oath, that there never more should be a Danish King in England.

After (d) this Cnute the Son of Swane laid claim to the Crown of England as a Saxon, as well as deriving from King (e) Ethelbald; who doubtless was the Son of an Elder Brother of King Alfred, who opposed Edward the Elder.

Notwithstanding this, tho' (f) the Danes *Elected* Cnute, the English adhered to Ethelred. Upon whose Death they chose his Son Edmund Ironside, who, as appears by the Stream of an- cient Authorities, (g) was a Bastard.

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Upon * *Edmund's* Death, *Cnut* was Crown'd King of England by the Election of all; and according to *Florence of Woster*, he Swore to be Faithful Lord, as the People did to be Liege Subjects.

* Cited *Speilman's* Gloss. f. 277.

At *Cnut's* Death, his two Sons, *Harold*, (a) who was a Bastard, or rather Spurious, and *Hardecnute* his Legitimate Son by *Emma*, *Ethelred's* Widow, were by (b) *Leofric* and all the Nobility on the North-side of the River *Thames*, *Elected* Kings over all England, as Partners in Power, and Co-heirs; but Duke *Godwin* and other Noblemen in *West-Saxony* opposed, and prevail'd.

(a) *Inglus*, f. 58.

(b) *Leofric Comes & tota Nobilitas ex parte Aquilonis fluminis Tamisise elegerunt Haroldum & Hardecnute fratrem ejus, &c.*

It appears by an Author, who writ in the *Confessor's* time, and whose Words are transcrib'd by several that they prevail'd for the total Rejection of *Hardecnute*; (c) *Because he made not sufficient haste to take the Administration upon him.* Therefore *Harold* (who, however would have been King of *Mercia*, and the *Nor-thanimbrian Kingdom*) was *Elected* over all England, by the Princes, and all the People: Or, as another of like Antiquity has it; (d) *Is Elected King by all the People of England.* Upon *Harold's* Death, and not before, *Hardecnute* was received; in what manner appears by the standing Ritual for the Coronation of Kings,

(c) *Blb. Cor. Abbrev. Cron. fin. temp. Edw. Conf. vid. etiam ib. Cheop. A. 7. Cron. breve ad An. 1064. Haraldus Rex eligitur ab omni populo Angli.*
(d) *Malmf. f. 43.*

But *Emma's* Sons by *Ethelred*, *Alured* and *Edward*, as *Malmsbury* observes, were despised almost by all; rather through the remembrance of their Father's Sloathfulness, than by reason of the Power of the Danes. Yet they two without preference of one before the other, were accounted (e) *Heirs of the Kingdom*; and accordingly *Cnut*, (f) while in fear of the then Duke of *Normandy*,

(e) *Vid. Scrip. Nor. Encomium Emmae Regino hereditaria vestra privamini.*

C c 2

offer'd (f) *Geemr. f. 271.*

(a) M. S. cited Mon.
1 Vol. Reg-
nicura Regi-
ne assensu &
magnatum
consilio Co-
miti Godwi-
no committi-
tur donec
qui dignus
esset eligeretur & Bib.
Cot. Domit.
A. 13. Cron.
Wint.

(b) Gomer, f. 271. Ipse autem exivit hominem & Ed. totius Regni reliquit heredem Malms. f. 450. Post. Hard. in. ip-
sius ex matre Edw. a proceribus Angliae in Regem electus, &c.

(c) Cartas Antiq. C. C. Mon. 1. Vol. f. 59. Periclitata sit hereditaria successio, Magnun-
que inter fratrem meum qui patri Mortuo Successit meque habitum fuit.

(d) Mat. Par. edit. f. 46. Ethelwerd's Hist. mentioning Ethel-
ved Méus Alayus.

offer'd half his Kingdom to *Edward*, and his Brother *Alured*.

(a) Upon *Hardecnute's* Death, Earl *Godwin* was chosen Administrator, or Protector of the Kingdom; during the *Vacancy*, and till a fit Person should be *Elected King*. *Godwin* summons a *Convention* of the *States*, where he nominated *Edward*, *Ethelred's* only surviving Son by *Emma*; whom the *Saxons* call'd *Elgiva*. After some *Debates*, all consented to the *Election* of *Edward*. He being so *electd*, was in the sense of those Times (b) *Heir* of the Kingdom to the last *Possessor* *Hardecnute*, his Brother by the half Blood.

And yet 'tis observable, that (c) according to a Charter of *Edward's* passed in *Parliament*, at the latter end of his *Reign*, the *Hereditary Succession* was hazarded by the *Danes*; that is, according to what I before observ'd, the *Anglo-Saxon Regnant Branch* of the *Royal Family* was kept back, and was likely never to have been restored.

'Tis evident that it was not for *Edward* to carry this Point farther; for besides the *Danish* *Royal Family*, claiming from King *Ethelbald*; and (d) *Fretherick* Abbot of *St. Albans* in his time, coming from the *Ancient Saxons* and *Danes*, and lineally descended from King *Cnute*; in all probability, there were several Descendants either from *Ethelstan*, *Ethelwolf's* Elder Brother, or from *Ethelwolf's* Sons, *Ethelbald* and *Ethelbert*, or from the (e) *Historian* *Ethelwerd*. What was the known Law of the *Confessor's* time, both as to the *Succession*, and the continuing King, besides the former Evidences, appears beyond contradiction from that King's Laws; according to which,

1. The

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1. The (a) *Monarchy* was founded in a sort of Election, which explains in what Sense a King is there taken to be *constituted*.

(a) Vid. Sup^r of Ina.

2. If the King do not answer the end for which he had been constituted; (b) *not so much as the Name of a King shall continue in him*.

(b) Nec nomina Regis in eo constabit.

3. It receives as a (c) Rule in all Kingdoms, and particularly here, the Judgment of Pope Zachary, encouraging the Franks to Depose their King Childerick.

(c) Vid. The Antiquity & Justice of an Oath of Abjuration, p. 90. & 91.

With Edward the Confessor, end the Saxon and Danish Successions of Kings: Harold, the Son of Earl Godwin never was King, nor so reputed by any but his own Party,

Here I may observe:

1. That tho' the whole Scope of Sir Thomas Craig's Book of Succession, is to induce a belief that the Crown of England goes to the first in the Royal Line, by an immutable Law of Succession, Essential and Fundamental to the Monarchy; and will have it that by this Law, the Right of the Crown of England long since belong'd to the Royal Family of Scotland, (d) from the Sister of Edgar Atheling, who was never seiz'd, bating Sir Thomas's great contempt of our Antiquities I have no material Dispute here with him, who not only shews it enough to derive from much later Seisin, but gives up all that he would seem to urge, upon the imagin'd Fundamental Law of the Hereditary Monarchy; for these are his own Words:

(d) Of the Succession. f. 154.

(e) *The truth is, during the time of the English Saxons, the Form of the Monarchy was not well fix'd, nor is the History of it very certain, or to be depended upon.*

(e) F. 120.

Introd. f.
363.

2. Dr. Brady, who gives a much better face to wrong Notions, is mightily mistaken in his Assertion, that the Saxons did in their Subjection, owning of, and Submission to their Princes, acknowledge both *Proximity of Blood*, and *Nomination* of their Princes, often both, sometimes only one of them; but never follow'd any other Rule.

3. The chief Rule of Succession, upon the Death, or Disability of any King, was a proper *Election*, of worthy Persons of the *Regnant Branch* of the *Royal Family*.

Introd. f.
364.

4. Dr. Brady's Notion, that *Elegerunt*, signifies no more than *recognoverunt*, they acknowledged, own'd, submitted unto him as their King, is by no means true; the *Recognition* being manifestly Subsequent to, or in Consequence of the *Election*. Nor is any thing more plain than that the States did from the beginning of the *Saxon Monarchy*, rightfully declare an *Heir* to the Kingdom, and then acknowledge his Right, tho' neither next upon the *Royal Line*, nor representing the next; nor yet *Nominated* by the Predecessor. And indeed, till a rare and noted Instance in the Case of *H. 5.* (on whom the Crown had before been entail'd in Parliament) no Prince was known to have been formally Recogniz'd, till he had taken the *Coronation Oath*.

(a) Sup.
(b) Bib. Cot.
Claud. b. 6.
Reg. magn.
Abend.
c. 50. An.
931. Patriz
Procuratori-
bus. Vid.
Rot. Parl.
17. E. 3. P.
1. m. 20. d.
a Petition in
parl. from
the Borough
of Barnsta-
ble, setting
forth that
they had
been a Bo-
rough and
sent Mem-
bers to Parl.
ever since
King Athel-
stan's Char-
ter.

5. If according to any good Authority of the *Saxon* or *Danish* Times, it should seem that any Man came to the Crown by the Gift of his Predecessor; it must have been made with such Solemnity as was requisite, even for the granting of Lands; as that of (a) *Egbert's*, above mention'd, or (b) *Athelstan's* in an Assembly of the

Bisho

Bishops, Abbots, Dukes, or Earls, and the Procurators, or Representatives of the Country; or (a) another before the Plebs or Commons, or Edgar's (b) in the open Air, with the privy of the Great, or Wise Men of his whole Kingdom.

(a) Cart. Aethelstani. Bib. Cot. Sup. tota Plebis generalitas.
(b) Cart. Antiq. in turri Lond. B.

In the Confessor's Life-time there were three Competitors for the Crown, *Edward, Edgar Atheling's Father, and Son to Edmund Ironside; Harold, who was High Steward of England, and the most Powerful of any Man, tho not his Father's Eldest Son; and William, Duke of Normandy, grand Nephew to Emma, who had been Crown'd Queen of England, nor was William under any incapacity from his Bastardy.* Besides his Wife *Maud* was descended from a Daughter of King *Alfred*, Marry'd to *Baldwin*, Earl of *Flanders*. Upon which account, a Commentator on the (c) *Grand Customary of Normandy*, held him to be the First or Chief Heir.

(c) Guil. de Roville, Erat Regni Anglie Primor hoeres ex Matilda, &c.

Edward, Son to Edmund Ironside, was at one time design'd by the Confessor for his Successor, if he could prevail with the Nation to consent; but that Edward, by dying before the Confessor, his Son, being a minor, seems never then to have been thought of.

Harold's Design was covert; nor do's he appear to have been a Pretender, till the Confessor lay upon his Death-Bed.

CHAP.

C H A P. XXXVII.

Of William I. Falsly call'd the Conquerour, that he came to the Crown upon a Saxon Title, and thereby continu'd the Right of the Crown of England to the Superiority and direct Dominion over the Kingdom of Scotland.

That his became only the Regnant Family; but he left no Right of Descent to the next of his Blood.

THO' the Proofs of the Superiority of the Crown of England over Scotland, and the exacting Liege Homage from their Kings and Great Men, as Attorneys for the People, in the British and Saxon Times, is undeniable; yet 'tis suppos'd, that there are weighty Objections against the continuance of it to the Norman Race. Tho' the Possession of the Crown of England with the Consent and continu'd Submission of the English may be sufficient to satisfy any Man, who in the least attends to what I have already observ'd, yet to follow the Advice of the Wise Man, I shall answer these Men in their own way, that they may not value themselves upon such weak Objections.

The chief, which depends upon more Points than one is, that *Edgar Atheling* was next Heir of the Crown of England, and the King of Scots Marrying his Sister, the Right of the Superiority, and the Homage in Virtue of it, was long since merged, being thro' Descents from that Marriage fallen upon the Kings of Scotland.

Not yet to consider the Scotch Pedigree, I may here observe :

1. That

1. That if strict regard be had to the Descent of the Crown, as of other Inheritances, the Descendants from any one of King *Alfred's* Elder Brothers, ought to have been preferred before all who derive from under him : And, as *Ethelwerd*, the Historian, was great Grandson to *Ethelred*, one of the Elder Brothers, I have shewn the Son of another mention'd in King *Alfred's* Will, who was set up by the *Danes* to contend for the Monarchy with *Edward* the Elder, under whom, it seems, *Cnute*, the *Dane* Claim'd. The consequence of which, according to the Notion of the Divine Right, distinguish'd from the Civil, would carry the Right of both Crowns to another Family.

2. *Edward*, the Father of *Edgar Atheling* and *Margaret*, was an *Out-law*, as all agree : Nor does it appear, that this *Out-lawry* was ever revers'd, neither was it likely it should, to give colour to any fancy'd Right, in his Son, to the prejudice of the Possessors of the *English Throne*.

3. Further yet, *Edmund Ironside* their Father was himself a *Bastard*, as the best Historians are positive, and is agreed by *Sir Thomas Craig*, while others pass it over in silence, in regard of his Virtues:

This may clear the way for asserting the Right of the *Bastard* of *Normandy*, to the Crown of *England*, with all its Appendages. And to take in all Objections, I shall in as few Words, as well may be, shew.

1. That he stood nearer to the Throne by the Laws of *England* than *Edgar Atheling*; and his Bastardy was no material Objection against it.

2. That in regard to that relation, and his Per-

Personal Merits, he was *chosen Successour* by a *National Consent*, in the Life-time of the *Confessour*.

3. That he came to the Throne upon that Right, and not as a *Conquerour*.

4. That he was truly *Blessed* at his Coronation.

5. That he renounc'd all Pretence to *Conquest*, not only by his *Coronation Oath*, but by several Charters.

1. Tho' it may be Objected, that if *W. 1.* had been no *Bastard*, he could not, however, be thought to stand nearest the Throne, as standing in the second Degree of Consanguinity by *Emma*, his great Aunt, who was only Queen of England.

Yet if this were so, and that the Claim of Consanguinity with her Son *Edward* were not allowable, this would not be thought to weigh much, if we attend to the Law of the Kingdom, in the *Saxon Times*, shew'd above, which allow'd of no Rule of Descent of the Crown barely from being Born in Wedlock, but upon the account of *Consanguinity*, or *Affinity*, with *Kings* and *Queens*, who had been chosen and consecrated to the Royal Dignity; and therefore till a Woman was solemnly Crown'd Queen, she was not admitted to Bed or Board with her Husband: but from that time, as the *Ritual* has it, being taken in *Consortiumtheri*, she became *Queen Consort*.

Thus the Relation of *W. 1.* to *Emma*, gave him a Qualification for an *Election*; as being of the Royal Family.

If his *Bastardy* did not hinder, he must be agreed to have been of the whole Blood to *Emma*, the *Confessour's* Mother, but besides that *Edgar Asheling's* Father was an *Out-law*, *Edmund*

Coronat.
Ethelredi &
H. 1.

mund his *Grand-father*, was but of the *half Blood* to the *Confessour*, who was the last Possessor of the Throne, and therefore *W. 1.* had an allowable Claim of *Consanguinity*, not only with *Emma*, but with the Person last seiz'd of the Inheritance of the Crown, and that in the nature of Purchase, not being by a strict Rule of Descent: but where such Rule is attended to, the Inheritance must be deriv'd from the Person last seiz'd.

Vid. Little-
ton Sect. 4.

Tho' *Edmund*, the Father of *Edward* the *Out-law*, was a *Bastard*, yet his Possession of the Throne, I must agree, according to the Resolution, purg'd all Defects; and if his Son *Edward*, the *Out-law*, had succeeded, neither the *Bastardy* of his Father, nor his own *Outlawry*, could have been urg'd to his prejudice.

Prima H. 7.

Bastardy, 'tis certain, was not in those times accounted Ignominious: For if it had, *W. 1.* would never have styl'd himself, *The Bastard*, as he did in one of his *Charters*: But as several of them passed in his *Parliaments*, strengthen his Title by Settlement, with *Consanguinity* to the *Confessour*; this was an effectual Legitimation, if his Possession of the Throne had not made him Legitimate *ipso facto*.

It must be agreed, that according to the *common Law, in relation to all Inheritances, his Dying seiz'd, was an absolute barr to all Lineal and Collateral Heirs of the *Saxon Royal Family*, of which, as the Resolute Monk *Guitmond* told him, There were many besides *Edgar Atheling*, at his Accession to the Throne.

And I find a Charter of the *Confessour's*, sub-
your upon *Arlotta*, from whom perhaps came our Name of *Harlot*, &c. read Hen-
ter's Tract de *Liberationi natiuitate*, where you shall find a kind of Legitimation of
that now disgracefull Name of *Bastard*, which in more ancient Times was an approv'd
Title, inserted in the Style of great and most honourable Princes.

* Vid. 1.
Inst. F. 234.
Vid. Sel-
den's Notes
on Polyolbi-
on. F. 74.
Obj. Not;
that Duke
Robert got
the Conque-

scribed

scribed, among others, by *Robert Regis Con- sanguineus*, the King's Cousin, and *Esbern* another.

2. As Duke *Wm.* was in *England* in the Year 1051, that by the Year 1057, or 1058, the Crown was settled upon him with a true National Consent, may appear to any Body, who will impartially weigh the Expressions of the ancient Historians.

To prove that he was *Elected* in the *Confessor's* Reign, it may be sufficient to cite 3 Authors of great weight, *Ingulph*, *Pitavienfis* and *Ordericus Vitalis*, who is most particular in what relates to that great Prince, next to *Pitavienfis*, whom *Orderic* follow'd as far as *Pitavienfis* went.

Ing. R. 68. *Ingulph* says, the *Confessor*

<i>Ad cognatum suum</i>	' Apply'd his Mind
<i>Willielmum Comitem</i>	' to his Kinsman <i>Wm.</i>
<i>Normaniæ animum ap-</i>	' <i>Earl of Normandy</i> ,
<i>plicavit, & eum sibi suc-</i>	' and with a stable Voice
<i>cedere in regnum voce</i>	' ordain'd or appoint-
<i>stabili sancivit.</i>	' ed, that he should suc-
	' ceed him.

He further says,

<i>Rex Edw. Rob. Arch.</i>	' King <i>Edward</i> sent
<i>Cant. Legatum a Latere</i>	' <i>Robert</i> , <i>Arch-Bp.</i> of
<i>suo direxit, illum desig-</i>	' <i>Canterbury</i> , his Em-
<i>natum sui regni suc-</i>	' bassadour, and ac-
<i>cessorem, tam debito co-</i>	' quainted him by the
<i>gnationis, quam merito</i>	' <i>Arch-Bp.</i> That he
<i>virtutis sue Archipræ-</i>	' was designed <i>Succef-</i>
<i>sulis relatu insinua-</i>	' <i>sour</i> of his Kingdom,
<i>vit.</i>	' as well for the Right
	' of his Relation, as the
	' merit of his <i>Virtue</i> .

Many

Many of the Moderns will have it, that *Wm.* was appointed Successour by *Edward's* Will; But besides that it was *Vox stabilis*, a *stable Voice*, or Declaration by Word of Mouth; and that the *Embassy* to give that assurance was, as *Pictaviensis* informs us, and I could prove at large with the *Assent* of his *Great Men*; 'tis certain, the Writers of that time never ascrib'd such Authority to the Will or last Testament of a *Printe*, made without Consent of his People. Therefore it was, that one of the *Norman* Writers censures *Harold* as a Mad Man, for not staying to see what the *Publick Election* would determine. But that the *Appointment*, as it is imply'd in *Ingulph*, to have been with all Essentials to make it *stable*, was so in fact, *Ordericus* is positive: His words are these.

Pictaviensis
F. 181.

Vesanus Anglus, &c.

Edwardus propinquo
Suo W. D. N. Primo
per Rodbertum Cant.
Summum Pontif. postea
per eundem Heraldum
integram Anglici regni
mandaverat concessio-
nem, ipsumque conceden-
tibus Anglis, fecerat to-
tius juris sui heredem.

"Edward sent an Em-
bassy to his Kinsman
"W. Duke of Norman-
dy, first by Rodbert-
"Arch-bishop of Cant-
erbury, afterwards by
"Harold himself, ac-
quainting him with
"the entire Grant of
"the Kingdom of
"England. And he
"had made him Heir
"of all his Right, with
"consent of the Eng-
lish.

Ord. Vital.
F. 492.

3. Upon the *Norman* Duke's Landing, he receiv'd an *Herald* from the then Possessour of the *Eng-lish* Throne, complaining of *William's* invading his

Pict. 3. Ge-
sta Guil. Du-
cis Norm. &
Regis Anglo.
E. 199.

his Country : but owning that he remembered the *Confessour* had by his Will decreed, that *William* should be the Heir of his *Kingdom*; which he pretended to be of no force by the Law of *England*, being without a general *Convention* and *Edict* of the *Senate* and *People*; passing over the true question upon the *Act* of *Settlement*.

Selden's
Review p.
439

Duke *William* returned, that his *Cousin Edward* had constituted him *Heir* of the *Kingdom*, by Reason of the many Benefits *Edward* and his Brother had received of him, and his Ancestours, and because he thought *William* to excell all who touched or were of his *Stock*, and was best able to assist him while he Lived, and Govern the *Kingdom* when he dyed.

Pistav. sup.
Qui genus
suum attin-
gerent.

Sane neque id absque suorum Optimatum consensu, verum consilio Stigandi Arch. Godwini Comitum Lewrici, Sigardi Comitum, qui etiam iurejurando confirmaverunt quod post decessum me reciperent Dominum, nec ulla tenus paterent in vita illius patriam hanc ullo impedimento occupari.

Nor indeed, says he, was it without the Consent of his *Great Men*, but by the Advice of *Arch-Bishop Stigand*, *Earl Godwin*, *Earl Leofric*, *Earl Sigard*, who also confirm'd with a solemn Oath, that they would receive me for Lord after his decease, and would not suffer any thing to be done in his Lifetime, to hinder the effect of this Settlement of the *Kingdom*.

He adds, That *Godwin's Son* and *Grandson*, were sent *Hostages* to assure him of this; and afterwards

afterward *Harold* himself was sent, to confirm what his Father and the others had Sworn.

All Historians agree, that *Godwin's* Son and Grandson were sent into *Normandy* in the Year 1057, or 1058, as Hostages for performing what was then agreed on.

That the Succession of Duke *Wm.* was the main Point, cannot be deny'd.

If *Orderick* be excepted against, as living after the time; no Man can question the Authority of *Pictaviensis*.

He, after mentioning the Desire of the Bishops, and the rest of the *Summates*, or Great Men, that Duke *Wm.* would accept the *English* Crown, says of him, ' * Whose Children and Grand-

' Children with a just Succession will Preside
' over the *English* Land, which he Possess'd
' both by *Hereditary* Delegation made firm by
' the Oaths of the *English*, and the Right of
' War: Being Crown'd with such Consent of
' those *Great Men*, or rather Desire. And if
' Reason, or account of *Blood* is required, 'tis
' well known in what nearest *Consanguinity* he
' touch'd *King Edward*, being the Son of Duke
' *Robert*, whose Aunt *Emma*, the Sister of *Ri-*
' *chard* the 2d. Daughter of the 1st, was *Ed-*
' *ward's* Mother.

Where tho' he Names Right of War, 'tis manifest, 'tis only in relation to the recovering the Possession, which had been *Duke William's* Right upon the *Hereditary* Delegation, or Settlement, confirm'd by the Oaths of the *English*, and by the *Merit* they found in one of the *Saxon Royal Family*.

This with all the circumstances might be prov'd at-large, and that, tho' when *Duke William* ju-

* *Pictav.*
F. 206.
Hereditaria
Delegationis
sacramentis
Anglorum
firmata.

stify'd

stified his Expedition, only the Principal Men of the *English* Nation, who were the Heads of the contending Parties were nam'd; to put *Harold* in mind of the time and occasion of the Settlement of the Crown, yet it had been made with a full *National consent*.

Harold notwithstanding this, and that he himself, had Sworn to maintain the *Act of Settlement*, would not quit the Possession of the Throne but with his Life.

He fell in the Battel decisive to him, but not of the fate of the Nation: and therefore the Powerfull Earls, *Edwin* and *Morcar*, who march'd slowly after *Harold*, and seem'd willing to leave him to take his chance, being far from the Opinion of a learned *Prelate*; that if one *Sovereign Prince* Conquer another, the Subjects thereby become *Slaves*, till they can get Terms for themselves; would not receive *William* for their King, till he had first given full assurance of his accepting those Terms, upon, or in confidence of which, he had been chosen in the Life time of the *Confessor*.

If there were any Ground for that *Prelate's* Opinion, who was not aware that he unluckily cited the Judicious *Pufendorf*, who determines quite contrary to his Lordship, that in such a Case a State of War continues, till the Victorious Prince, and the People whose *Sovereign* was Conquer'd, agreed upon Terms.

Yet *Duke Wm's* Victory over *Harold* could not have gain'd *England* by Right of Conquest, as *Harold* was an Usurper, neither of the Ancient Race of Kings, nor chosen by a National Consent.

Therefore as the Lord *Coke* rightly observes, he is never in *Domesday-Book* nam'd by the

Name

Vid. a Treatise entituled
God's Ways
of disposing
of King-
doms.

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Name of King, but only by the Name of Earl *Harold*. Accordingly he leaves him out of the List of Kings.

His possession prov'd very short, not lasting above 9 Months. He was never recogniz'd by the States of the Realm, or fully submitted to by the Body of the Nation, nor did he hold any Parliament: which may be the Reason that no Charter of his is to be seen. And for Demonstration that *William* had a Title Prior to his Victory, all who fought for *Harold* against him, forfeited as Traytors.

After *Harold's* Death, as the Ancient Historians agree, *Duke Wm.* * made a League with the Earls *Edwin* and *Mercar*, and their unbroken Army, at *Berkamstead*, and not only with them, but such others as thought fit to meet, at the Council appointed to be held there.

4. Part of the League or Contract, was that he should be Crown'd, as the manner of the English Government requires: and an Author of that time assures us, that all the (a) Bishops and Peers of the Realm agreed with him, and desired him to accept of the Crown.

He further shews that *Wm.* was in great dispute with himself, whether he should take it or no, chiefly out of Love to his Wife *Matilda*, who he was afraid would not be admitted into Consortship with him.

All Authors assure us, he took the usual Coronation Oath, and the Ritual for the Coronation of the Saxon Kings, was used then, and in the time of *H. 1.* with no material alteration.

The Ritual of the Norman times, seems to give the chief Authority of Election only to the Bishops;

* Flor.
Vig. Fidelitatem juraverunt quibus & ipse foedus pepigit. R. de dicto Cot. 480. Bromton Col. 258. S. Dun f. 135.

(a) Pistav. Cuncti Praefules regni-que Proceres concordiam fecerunt, &c.

Bib. Cot. sub. Effigie Claudii A. 3.

Bishops : for whereas the *Saxon Ritual* speaks of the Kings rising from the Ground after the *Leramy*

Ab Episcopis & plebe e- " Being elected by the
lectus, " *Bishops*, and the Com-
" *mons* or People,

The last *Ritual* says,
Ab Episcopis electus. " Being elected by
" the *Bishops*.

Yet that *Ritual* shews, that after the King had taken the *usual Oath*, one of the *Bishops* was to ask the People.

Si tali Principi ac Re- " Whether they would
tori se subice, reat " subject themselves
jussionibus ejus obtem- " to such a Prince and
perare, velint. " Ruler, and obey his
" Commands,

Then it was to be answer'd by the Clergy and People standing round about,

Volumus & concedi- " We Will and Grant.
mus,

Both the forms agree in the Prayer for their Kings, in one of which they say,

Respice ad preces no- " Look down at
stra humilitatis super " our humble Pray-
dine famulum tuum ill, " ers upon that thy
quem supplici devotione " Servant, whom we
in Regem elegimus. " with Suppliant De-
" votion

"votion have chosen
"King.

One of the Forms in another Prayer calls him *Præelected* King, another purely *Elected*. If then was the *Infancy* of this Kingdom, as Sir Thomas Craig supposes; and that King made the Fundamental Law of Succession, here was the *Fundamental Contract* upon which his Descendants were to Succeed; and the *Nonjurors*, who are dissatisfied with Sir Thomas's admitting that the consent of the People us'd to be ask'd at the Coronations, must invent a new *Ritual* very different from that which was then followed, from no less an Authority than St. Dunstan's, in the Crowning King *Ethelred* at Kingston.

5. The Title which I have shewn, and not the Sword, W. 1. Claim'd by in his Charters.

In one of his Charters he Stiles himself,

Dei dispositione & consanguinitatis hereditate, Anglor. Basileus, Normanor. Dux & Rector,

By God's disposition and the inheritance of Consanguinity, Emperor of the English, and Duke, and Ruler of the Normans.

Rot. Cart.
1. R. 2. m.
11. n. 6. per.
Inspec. De
conf. St.
Mart. Lond.

This was a Charter pass'd, if not in Parliament, at least in a great Council of Peers: for it was,

Archiepiscoporum, Episcoporum, Ab. Comi. & universor. Procerum meor. sacro consiliis patens.

Paying regard to the sacred Counsel of the Archbishops, Bishops, Abbots, and all my Peers or Nobility.

E e 2

This

An. 1068.

This was in the 2d Year of his Reign, had been first agreed on in the King's Court held at *Christmas*, and confirm'd in another at *Whitson-tide*. The Charter order'd at *Christmas*, being, as it seems, Read at the Court held at *Whitson-tide*.

Twill be material to observe, that this was at the request of the old Saxons Proprietor *Ingelric*, (who as appears above had large Possessions at the *Survey*) and to see who were the Witnesses to this Charter: They were the Queen, one of the King's Sons, the 2 Arch-bishops, *Stigand* and *Aldred*, *Robert*, the King's half Brother, the Earls, *Edwin*, and *Marchere* or *Mercar*, *Waldeof*, *Roger Montgomery*, and Princes, *Richard*, the Son of *Gislebert*, and *William Malet*.

This Prince *Malet*, and all but the King's three Relations, and *Roger Montgomery*, and *Richard*, the Son of *Gislebert*, I could shew to have been Saxons, as being here before Duke *Wm's* Expedition. And it may be some question, whether *Roger* was not the Son of *William*, Earl of *Hereford*, who was the Son of *Osbern the Dane*.

* Mond. 1.

Vol. F. 48.

Hæreditario

jure factus

Cart. Antiq.

B. n. 4.

† Mond. 1.

Vol. f. 289.

The like I could shew to the end of King *Wm's* Reign, or very near it.

In another * Charter, that King styles himself King of the English made by Hereditary Right.

In another † speaking of the *Confessor*, 'tis added.

*Cujus, miseratione dni,
genere & dono in reg-
no sumus heredes.*

Whose Heir in the
Kingdom by God's
Mercy we are by Re-
lation, and Gift.

A

A Charter of his in a full *Parliament*, the Historian *Ingulph*, who was a *Saxon*, subscribes.

Regalium decretorum
Notarius.

‘ Notary of the *Sulcard*, in
‘ King’s Decree, but *Bib. Cot.*
‘ rather *Register*.

This was in the 15th Year of his Reign, and *An. 1087.*
was

Convenientibus in u-
numcunctis Patriæ Pri-
matibus, in Nativitate
Christi.

‘ In a *Convention* of
‘ all the *Peers* or *No-*
‘ *bility* of the Kingdom,
‘ at *Christmas*.

At that there were *Saxon Bishops*, particularly *Wulstan*, Bishop of *Worcester*, and *Osmond* of *Salisbury*, who continu’d Bishops beyond the Survey, and not to mention others whom I could shew to be *Saxon Peers*, there was *Henry de Ferrars*.

In the Charter which then passed to the Church of *Westminster*, mentioning the *Confes-*
sour, ’tis said,

Qui me supernâ cle-
mentiâ heredem sibi esse
Et ut Angliæ genti re-
gendo Præsem adop-
tavit.

‘ Who, by God’s mer-
‘ cy, adopted me his
‘ Heir, and to præside
‘ in Ruling the *English*
‘ *Nation*.

For full manifestation how *W. 1.* came to the Crown, and what Right he acquir’d, I shall transcribe the chief part of a Charter of his to the Church of *Westminster*, passed as he himself says,

Consultu atque consensu Primatum meorum.

Ret. Cart.
5. E. 3. m.
19. n. 32.
pro lb. &c
Conv.
Westm.

Ego Willm. Dei gratia Dux Normannor. per misericordiam divinam, & auxilium beatissimi Apostoli Petri, pii fautoris nostri, favente iusto Dei iudicio, Angliam veniens, in ore gladii regnum adeptus sum devictus Haroldo Rege cum suis complicibus, qui michi regnum providentia Beidestinati, & beneficio concessionis Domini & cognati mei gloriosi Regis Edwardi concessum, conati sunt auferre. Cum ergo comperissem, quod idem predecessor meus beate memor. præd. Rex dimisisset coronam & al. regalia regni præcipua ad Ecclesiam St. Petri Westmin. quam divinitus pro remedio animæ suæ inspiratus, in loco penitentiae antiquam reedificavit, & ipse, quod dicit sapientia stultum est non attendere ad quem finem tendas, & illud,

‘ By the advice and
‘ consent of my Great
‘ Men.

‘ I W. by God’s
‘ Grace Duke of the
‘ Normans, by the Divine Mercy, the aid of
‘ the most Blessed Apostle Peter, our Pious Patron, Gods just
‘ Judgment favouring,
‘ coming into England, have obtain’d the
‘ Kingdom by the edge
‘ of the Sword, King
‘ Harold being overcome with his accomplices, who endeavour’d to take
‘ from me the Kingdom, design’d me by
‘ God’s Providence, and
‘ given by Virtue of the
‘ grant of my Lord and
‘ Kinsman, the Glorious King Edward:
‘ When therefore I
‘ found that the same
‘ my Predecessour, the
‘ said King of blessed
‘ Memory, had demis’d the Crown, and
‘ other chief regalities
‘ of the Kingdom, to
the

per mea Reges regnant
 & Principes iusta de-
 cernant, & aliud, servi-
 re Deo vere regnare est;
 & quia qui ecclesiam
 Dei honorant cum illa,
 & in illa, & ex illa
 honorantur, Decevi om-
 nes omnino eccles. Dei
 exaltare & honorare, sed
 maxime illam in cuius
 materno utero corpus
 Dmi præsatur, præd. resti-
 tutus sepultura Reginae
 ut cepimus requiescit, &
 in qua ipse oleo S^æ Un-
 ctionis primitus & co-
 rona regni adeo per pon-
 tificales manus, primo
 anno victoriæ meæ, ip-
 so Die Nativitatis, ce-
 lebriter coronatus sum.

Ne ergo vacuus ap-
 parerem, Antistiti Dei
 Apostolor. Petro quam
 Præducem & signife-
 rum, inveni, & ne ingra-
 tus existerem animæ be-
 nignissimi præd. Regis,
 qui me in regnum suum
 adoptivum heredem in-
 stituerat, & ut Deus
 per suam gratiam, &
 banc elemosynam, stabi-
 lisset & confirmare reg-
 num, mihi & filiis meis

the Church of St.
 Peter's Westminster,
 which Ancient Church,
 being Divinely in-
 spired, for the good
 of his Soul, instead of
 penance, he rebuilt.
 I also because Wis-
 dom says, 'tis Foolish
 not to attend what
 end you propose;
 and that, by me Kings
 Reign and Princes
 decree justice; and
 again, to serve God
 is truly to Reign; and
 because they who
 honour the Church
 of God are honoured
 with her, and in her,
 and from her; I have
 determin'd to Exalt
 and honour God's
 Churches everywhere
 but chiefly that, in
 whose Motherly
 Womb, we are given
 to understand, the Bo-
 dy of the above men-
 tioned said Lord, rests
 restored to royal bu-
 rial. And in which I
 was first so solemnly
 Crown'd with the
 Oyl of the holy Un-
 ction, and the Crown

Et eorum heredibus.
&c.

of the Kingdom, the
 first Year of my Vi-
 story, on the very
 day of the *Nativity*.
 Therefore that I
 may not appear emp-
 ty handed, to the chief
 of God's Apostles,
 whom I found my
 Leader and Standard
 bearer, & that I might
 not be ungrateful to
 the Soul of the said
 most benign King, who
 instituted me adoptive
 Heir of his Kingdom,
 and that God would
 by his Grace, and
 his alms, establish
 and confirm the King-
 dom to me, and my
 Sons, and their Heirs.
 &c.

Among his Grants, he gives two Beasts of
 his own Hunting, as often as he shall be Crown'd
 in that place at the *Solemn Feasts*, and at the
 Feast of *St. Peter*.

He confirms the Grants of a certain Citizen
 of London, *Alfwold Cokesfat*, and another, one
Aelfward Grossus, *Gross*.

He adds,

*Hac igitur eadem ec-
 cles. Winton simul &
 Gloucest. concessi quia*

Therefore I have
 granted the same
 things both to the
 Churches

pred. relatione sapien-
tum, ter in anno tribus
istis & in locis majori
solummodo, tam pro pa-
cis eccles. unitate quam
regni mei soliditate, de-
beo maxime sullimari
corona. Itaque quoties
ab expeditione aliqua
sive a Normania sive
etiam extra Angliæ li-
mites rediero & eccle-
siam pref. Westm. pro
recognitione, quia mihi
prima sedes regalis est
& principalis visitave-
ro, ac Conventu ad pro-
cessionem pro gloria &
honore susceptus mar-
ca totius auri piam
antecef. meor. devote
prosecutus institutionem
eccles. prelibatam re-
munerari concedendo
deuovi Contestar, igitur
filii, meos heredes scil,
& omnes posteros meos,
pertremend. iudicium
Dei, ne ipsi faciant aut
feri sinant ullam infra-
ctionem huic mea dona-
tioni,

Churches of Winche-
 ster & of Gloster, be-
 cause by the relation
 of the said Wise Men,
 thrice in a Year, and
 in those 3 places, as
 well for the unity of
 the Peace of the
 Church, as for the
 establishment of my
 Kingdom, I ought
 to be greatly eleva-
 ted with my bigger
 Crown. Therefore as
 often as I shall re-
 turn from any Expe-
 dition either from
 Normandy, or also
 from without the
 Bounds of England,
 and shall visit the
 Church of Westmin-
 ster, for an acknow-
 ledgement, because it
 was my first and prin-
 cipal Royal Seat, be-
 ing receiv'd by the
 Convent at a Procef-
 sion with glory and
 honour, so often de-
 voutly pursuing the
 pious Institution of
 my Ancestors, I have
 granted and promis'd
 that the above nam'd
 Church shall be re-
 munerated

'munerated with a
 'Mark of Gold. There-
 'fore I conjure my Sons,
 'to wit, my Heirs, and
 'all who shall come
 'after me, by the tre-
 'mendous Judgment of
 'God, that they never
 'cause, nor suffer any
 'infraction of this my
 'Grant.

This is full of Demonstration against the Supposition that *W. 1.* came to the Crown, or Govern'd like a *Conquerour*.

Here 'tis agreed by him and his *Wise Men*, or *Senatours* in full Parliament.

1. That his Victory, which was *God's Judgment* on his side, was an Adjudication of the Crown to him upon a *Prior Title*.

2. That his Title was an *Adoption*, or being Declar'd Heir in the former Reign; for which *Settlement* of the *Crown* he was qualify'd, as being related to the then *King*.

3. This being such an *Adoption* as the *Parliament* held Valid, the Record manifestly confirms the *Historians*, which shew, That it was with the *Consent of the English Nation*.

4. Next to that of asserting the Right of the Crown by his Sword, no other effect is ascrib'd to the *Victory*, than the subduing *Harold* and his Accomplices, who would have depriv'd *Duke Wm.* of his Right.

5. As there were Saxon Citizens of *London*, with Surnames, it shews how weakly all Proprietors of those Times have been concluded to be *Normans*,

Normans, or others of Foreign Birth because of their additions.

6. *Normandy* being annexed to the Crown of *England* by his being King, was distinguish'd from other Parts out of the Bounds or Jurisdiction, of *England*.

7. He shews his fix'd Resolution to Govern according to the ancient Law of the Kingdom, in reviving the old *British* Law continu'd downwards, for the King solemnly to wear his Crown thrice a Year at *London*, *Winchester*, and *Gloster*, at which time all the *Nobility* were to attend, and Justice was to be Administred to all Men, by their *Adjudication*, or *Advice*.

8. Tho' there is no Formal *Entail* of the Crown upon *Males*, there's something very like it; and a full Declaration, that the Crown should not go to *King Wm's* Heirs general; which it must have done if he had been held to acquire Right of the *Conquest*.

9. The Heirs design'd, or intended, were not they who should have a strict Right of *Proximity*; but as it had been in the *Saxon times*, and in the * *Civil Law*, all the Sons were accounted *Heirs*: And as it was to go to the *Heirs* of all the Sons; it could be no otherwise than as continued to the Family, and therefore whoever of *Duke Wm's* Descendants should come to be Declar'd King, would be *Heir* within the plain meaning of the Charter, declaring the Judgment of *Wm. 1.* and his Parliament.

As *W. 1.* was Declared King upon a *Legal Right*, he more than once receiv'd and Swore to that Body of the Common Law of *England*, which had obtain'd the Name of *King Edward's* Laws, which as has been observ'd, declare the end

Sir T. C. f.
311. By the
Civil Law
Sons are all
equal in the
Succession of
the Father.

end for which a King is *Constituted*; and that he loses the Name, or ceases to be King, when he answers not the End.

Sir T. C. of
the Succes-
sion F. M.
233.

This shews how grossly Sir Thomas Craig was out, in supposing, that the Succession to the next of Blood to King Wm. whom he calls the *Conquerour*, was a *Fundamental* Law made by him in the *Infancy* of the Kingdom.

Upon this *Hypothesis*, he triumphantly Interrogates his Adversary.

' Did the *Conquerour* then after that most Bloody Battel get the Kingdom, that those descending of him should not succeed to it? Himself answers, ' 'Twas quite otherwise, for 'twas the *Fundamental* Law of the Kingdom, and as 'twere a kind of Sacred Covenant between the King and his People, that as long as the King shall hold his own Scepter, so long should the People enjoy their Goods and Lands; on the other hand, that as long as that People continue in being, and breath the Common Air, they shall maintain and defend the Rights of their King and of his Children, and the Succession immutable. For it was on these Terms, that their Children should succeed, that Kings acquired Kingdoms.

As this is built upon an Acquisition or Conquest without Precedent right, it may be adapted to their Fiction of * King Pergus; but that does not in the least concern the Succession to the Crown of England, to which Wm. the 1st. was admitted upon the Act of Settlement, and removing the *Usurpation*.

That he was content to take the Crown upon the *Fundamental* Terms is evident, and he thought

* R. James's
works, P.
231.
He made
himself King
and Lord
with Irish &c
such as wil-
lingly fell to
him.

thought it enough that his was accounted the *Reigning Family*, but was so far from making provision for the continuing of the Crown to the next of his *Blood*: that the Oath of Allegiance enacted in his time, was only to his Person without mention of *Heirs*.

That he had not acquired any such Right, as Sir *Thomas Craig* imagin'd, appears above to have been the Judgment of himself and his Parliament, and continued his settled judgment to the last: for in his Death Bed Declaration, which Sir *Thomas Craig* and others would set up for a well disposing of the Crown, at the same time when he owns that it was not his to give: he says,

I appoint no Heir of the Crown of England, but to the Creatour of the Universe, whose I am, and in whose Hands are all Things, I commend it, for I did not possess so great Honour by Hereditary Right, but with direful conflict, and much effusion of Blood, I took it from the Perjured King Harold, and brought it under subjection to me.

He adds,

Therefore I dare not bequeath the Scepter of this Kingdom to any body, but to God alone, lest after my Death worse troubles happen in it by my occasioning.

But my Son Wm. being always as became him obedient to me, I wish that God may give him his Favour, and that, if it please the Almighty, he may Reign after me.

According to this:

1. He did not believe he had any Right or Pretence to dispose of the Crown.

2. As

Vid. Sir G.
MPs Just
Right of
Monarchy.

P. 27.
Vid. Leges
W. 1.

Vid. tamen
Sir T. C. F.

139. They
bound them-
selves to be
faithful to
him and his
Heirs for
ever.
Sir T. C. F.
221.

Ord. Vital.
and Selden's
Notes on Po-
ly-biblion.

2. As he thought some, out of value for his Memory, would regard such a designation of a Successour, he apprehended, that others would be likely with Arms to assert the Latitude they had, of chusing either of his Sons.

3. That which he hoped would prevail in the Election, was the Merit of his Son Wm. for his Obedience, tho' he had not the Right of Primogeniture.

4. He held, that Providence only could determine, who should succeed: Which shews, that no Law had ascertain'd the Right of any particular Person, exclusive of all others.

5. One Reason was, that he had it not by Hereditary Right, that is, by a strict Rule of Descent of the Inheritance of the Crown. Not but that after he was Declared Heir, he had as true a Hereditary Right as any of his Predecessors, and that he had such a Right by Adoption, has appeared above.

Indeed, one of his Charters may seem to contradict his Death-bed Declaration, or the sense I have given of it, for speaking of his Victory over Harold, he says, he acquired the Kingdom due to him and his Successours, to be possessed for ever by Hereditary Right.

This might imply no more than that he was the Head of Successions, and after him, the Crown was to be enjoy'd Hereditarily, as before. But the course of his Charters, and especially that to Westminster, seems to carry it further, that his was become the Regnant Family, and the Right ought to be confin'd to descendants from him.

Sir Thomas Craig, whose common frailty 'tis to produce Arguments against himself; tho' he

lays

Cart. Ant.
tiq. in Turri
Lond. F. Et
collectanea
M. Hale mil-
it. in Biblioth.
Hosp. Linc.

lays the stress of his Notion of the Succession upon *Wm. the First's* coming to the Crown of England, as a *Conquerour*; agrees that he renounces that Pretence in his Laws; for Sir Thomas says,

‘ He owns in the Laws made by himself, that he had the Crown of *England* by the Will and Appointment of his Cousin, *Edward the Confessor*. Sir T. G. F. 179.

But does not give the Words, which evince the truth of what I have shewn above, in relation to the Dependency of *Scotland*; that Law speaking of *Margaret, Queen of Albany*, now *Scotland*, says,

Lambart
Archaeologia
mis & Bib.
Cot. Claud.
12.

Erat de jure post decessum Edgari Adeling, fratris sui, verus heres, ultimi Regis Edwardi, de Corona totius regni præd. sed instinctu, & petitione, & voluntate, boni Regis Edwardi propinqui nostri, aliter mutatum est, qui nobis coronam totius regni præd. dedit; & regnum præd. nobis jurare fecit, qui per optime equitatem & justitiam probitatemque nostram novit.

‘ She was of Right, after the decease of *Edgar Adeling*, her Brother, true Heir of the last King *Edward* of the Crown of the whole Realm aforesaid: but by the *Instigation*, and *Request*, and *Will*, of good King *Edward*, our Kinsman, it was otherwise appointed; who gave us the Crown of the whole Realm aforesaid, and he caus'd the said Realm to Swear to us, who knew our Equity, and Justice, and Probity.

‘ But

Princeps vero Albanie duxit eam in uxorem, casu fortuito.

Picti enim Albania a Picto duce vocantur, Scoti vero Albania a Scotto Duce nuncupantur. Est enim Albania pars Monarchie regni hujus, olim vocabatur regnum Britannie.

‘ But her the Prince of Albany hapned to Marry.

‘ For the Picts of Albany are call’d from Pict, their Leader, but the Scots of Albany are call’d from Scot their Leader. For Albany is part of the Monarchy of this Kingdom, which of old was call’d the Kingdom of Britain.

In another part of that Law, mention is made of the *Confessour’s* proposing, or purposing, that *Edgar Atheling* should succeed him, but fearing that *Harold, Tosti, Gurth, Lestwin*, and other Sons of *Earl Godwin*, would not suffer his purpose to be stable, or ratify’d, he adopted *William the Bastard*.

These Declarations in that Law, *Sir Thomas* shews he was sufficiently appriz’d of, but they are too full against him, to be any more than referred to by him: upon whose Authority all this is to import a Will or Death-bed Declaration of the *Confessour’s*; but he would be sure not to touch upon the Demonstration, that all *Albany* is within the *British*, now *English Monarchy*.

R. 279.

As to the present Question, What sort of Gift this was, *Sir Thomas* says.

‘ Can any Man be so void of Reason as to believe, that so Wise a Prince as *Edward* was, would have appointed him to be his Heir, who by the Laws of his Country could not be receiv’d?

receiv'd as such, when as the *Conquerour* was Born in *France*? Was *Edward* ignorant of the Laws of his Country? Nay, he was thoroughly acquainted with them, &c. It is not likely he would have made him his Heir, by his Will, who he knew could not be admitted, as being born out of the Kingdom.

The Law, and the Historians of the Times, remove all these Difficulties, in shewing that *Duke Wm.* Claim'd neither by Right of Descent, nor by any Will of the *Confessour*, nor yet by *Conquest*, but as the Law shews, the *Confessour's* Gift was but as Head of the *Monarchy*, in whose Name the Act of Settlement was made, at his instance and request, to the observing of which Act, the People of the Kingdom Swore, either in a *National Assembly*, or in the several *Counties*. And as the chief opposition to the Effect of it, was apprehended from Earl *Godwin* and his Sons, the *Historians* shew, that a Son and Grandson of his, were sent as Hostages to the *Norman Duke*.

Of the Right thus settled; the Clergy of that Time were so well satisfy'd, that the *Abbot* of *St. Albans*, who was thought indiscreetly to have set out the Merit and Power of the *Churchmen*, told King *Wm.* He owed his so easy gaining Possession, to the Belief the Clergy had, that it would have been Rebellion to oppose him.

As he came to the Crown according to the *Fundamental Constitution* of the *Monarchy*, and took the usual *Coronation Oath*, he after that more than once, Swore to maintain that Body of the *Common Law* of *England*, which had obtain'd the Name of *King Edward's Laws*; the main *Substratum* of which, as has appear'd, was the *British Law*.

F f

That

Wats. ad-
vers. ad Mat.
Par. addita-
menta

That Law declar'd, that he ought to do all things in his Kingdom *Rite*, in due manner, and by the *Advice of his Peers*. It further admonishes him of the End for which he was *Constituted*, which if he did not answer, not so much as the Name of King would remain in him.

'Tis not unpleasant here to observe, That tho' Sir Thomas Craig's Scheme of an Indefensible Right of Succession to the Crown of England, vested in their *J. 6.* is the most plausibly founded on the supposition that *W. 1.* was an Absolute Conquerour; and indeed, 'tis impossible for the *Non-jurors* to find any other but that sandy Foundation to build upon; yet as if he went upon the no less baffled Fiction of the *Patriarchal Power*, in consequence of which, Sir George Mackenzy holds, That as long as it is known who is the Root of the Family, or who represents it, there's no place for Election. Sir Thomas will have it, That if all things were narrowly canvass'd, *W. 1.* was an Usurper upon the Divine Right of Edgar Atheling, and that this has been with the Kings of Scotland ever since Edgar's Death; which as it is contrary to the Law of England, will appear to have had no more force in Scotland.

Sir G. M^s
Just Right.
p. 24.

t. 361.

C H A P.

C H A P: XXXVIII.

Of the State of the Succession, and Nature of the Hereditary English Monarchy from W. 1. to R. 2. inclusive.

William the 2d. being thro' the prevalence of the *English* against the *Normans*, Elected soon after the Fathers Death, truly succeeded upon the *Old Hereditary Right*, with no other difference, than that the Family of *W. 1.* was, if it consisted with the Good of the *Publick*, to be preferred before any other. And indeed *Wm.* stood fairer for a Recognition than his Elder Brother.

Dr. Brady observes out of *Knighton*, that the *Barons of England*, with the *plenary Consent* and *Counsel* of all the *Community* of the *Kingdom*, branded *Robert* with *Illegitimacy*, because he came not from a *Lawful Bed*. No Man, I believe, has imagin'd that *Robert* was not the Son of *W. 1.* by *Maud*, and that after Marriage. But as has appear'd above, till she was Crown'd *Queen of England*, she was but as a *Concubine*, and her Issue *Illegitimate*, or not Legally qualify'd to succeed to the Crown.

Thus the very Qualification to be *Elected*, proceeded from that *Election* which made the *Wife Queen*.

Upon this account, *H. 1.* was to be preferred upon the Death of *W. 2.* before the Eldest Brother *Robert*,

Dr. Brady's
Introd. f.
370. Cum
plenario
consensu &
consilio toti-
us commu-
nitatis.

Sir

F. 364.

Sir Thomas Craig, who had an admirable Talent of innocently arguing against himself, says, *Children who are born after their Father obtains some dignity*, enjoy certain Priviledges which are not common with them to the rest of the Children.

And in *England* the Children of such as are Naturaliz'd; who were born before the Naturalization, are postpon'd in the Succession of their Father, to them who are born after it was obtain'd; but 'tis in such things only as he acquires in that Kingdom, of which he is made Denizen. From all which then, 'tis evident that the Right of Succession to the Kingdom of *England*, did appertain to *H. 1.* For he only of all the Conquerour's Children, was an *Englishman*, born in *England*, and when his Father was King. Now admit that *H. 1.* had the strict Right of Descent, then

1. *Wm.* was not a Conquerour, and did not acquire a Right to him and his Heirs, upon which Sir Thomas's whole Fabrick is built.

For if he acquired a Right to him and his Heirs, Sir Thomas's suppos'd Law of Nature, not the Law of the Conquered Kingdom, ascertain'd his Heir.

2. If the Law of the Kingdom was to take place, then the imagin'd Disposition made by him to his Son *Wm.* was void. And whether there was such a Disposition or no, the very first Successor of the reputed Conquerour's Family was a Usurper.

As to *H. 1.* whatever Title has been devised for him, to suit Modern Schemes, he himself who best knew how he came to the Crown

OW

owns by his (a) Charter, That next to God's Mercy, it was owing to the Common Council of the Barons.

The Ritual (b) for his Coronation shews, that he had been Elected in a Convention of the States; prays to God to bless him whom they have elected King, and declares his Authority to be Delegated to him *hereditario judicio*, by an Hereditary Judgment, or Decree, constituting him Heir of the Crown.

Till he presumed too far upon the Love of the People, and bore too hard upon 'em, they never thought of changing him for his Elder Brother: nor was his Possession long disturb'd.

He, well knowing that his Issue had no certain Right of succeeding him, till the States should agree to it, prevail'd upon 'em to make two Settlements of the Crown successively; one upon his Son William, another after the Son's Death upon his Daughter Maud. And both the Settlements were establish'd by a National Oath. But 'tis observable, that the last was if the King dy'd (c) without Heir, say some, without Heir Male, say others.

According to which, with regard to the ancient Constitution, Stephen, Sister's Son to H. the first, when Recogniz'd by the States, became within the express provision of that Settlement. Agreeable to this, as we (d) have it from an Author of the Time, H. upon his Death-bed recommended Stephen to be receiv'd by Hereditary Right. And that Author speaks of his Merits, joyn'd with his being of the Royal Stock, as inducements to his Election.

(a) Cart. in Mat. Par.

(b) Bib. Cor. Claud. A. 3. De Conventu Seniorum &c. & Episcopi prosterant se super pavimentum hinc & inde circa electum Regem.

(c) An. 1116. Hemingford. f. 473. Gerv. Dorob. Col. 1337.

(d) Bib. Cor. sub. Esig. Vespas. A. 19. de Monast. Eliensi vel jure Hereditario suscipiatis & de stirpe regia descendat.

(a) Gesta
Regis Steph.
inter script.
Norm.

As (a) another Author, has it, Because he appear'd fit to Reign, as well for the Dignity of his Stock, as the Probity of his Mind, they agreed upon a common Resolution, and all with concordant Favour, Constituted him King; a Compact being first made, and a mutual Oath, according to the vulgar expression.

(b) Malm.
Hist. Hist.
Nov. f. 106.
Gerv. Do-
rob. Col.
1354.

(c) Brady's
Introduct. f.
371. Assensu
Cleri & po-
puli in re-
gem electus.

(d) Bib.
Cot. Galba
A. 2. Inter
sermones ad
populum
Quid obsti-
natus quid
perniciosis,
Quam con-
tra voluntatem
omnium
regni jura
violenter ab-
ripere.

(e) Brompton.
f. 1024.
Cart. adop-
tionis Suc-
cessorem re-
gni Anglie
& hæredem
meum jure
Hæredita
constitut.

* Sir R. c. f.
also supposes,
that Stephen
had the sole
Right, as the
first Male.

Maud's Title, tho' under a former Settlement of the Crown, gave him no disturbance, till he either broke his part of the mutual Contract, or at least disoblig'd the Clergy: Which makes his own Brother (b) the Pope's Legate, turn against him, and help to bring in Maud; who refusing to Swear to the Confessor's Laws, was (chiefly by means of the Londoners, who were very powerful at all Elections) rejected, and never fully Recogniz'd.

At that time, Election was counted no disparagement to the King's Title: For Stephen (c) not only took into his Title, by the Grace of God, by the Assent of the Clergy and People, elected King of England; but in an (d) Assembly of the States, in a memorable Speech, too long to be here inserted, appeals to them, who ought rather to succeed in a Kingdom? One whom the unanimous Consent of the Nobility, and the universality of the People earnestly wish'd for, desired, elected, or one, whom every Sex, every Age, oppos'd and cry'd out against? What more pernicious, than against the will of all, violently to snatch the Right of the Kingdom?

Had Stephen's Brave Son Eastace liv'd, in all probability, H. 2. had never succeeded; and however, was glad to come after Stephen as his (e) adopted Heir; as W. 1. had been to the Confessor. Neither was * Maud's Consent ever

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ask'd to the Settlement, or Recognition afterwards, tho she liv'd beyond that time : Nor did the *States* take any notice of her *pretended Title*, after her manifest *forfeiture*, of all that she could Claim by the Settlement in the time of H. 1. or otherwise howsoever.

Vid. Formad, Snm.

H. 2. knowing that the Consent of the *States* was the best Title any Child of his could have to succeed him; and yet that they had liberty of altering a Consent, given upon Reasons, which might afterwards fail; out of abundant care to his Son *Henry*, had him Crown'd in his Life-time; which thro' *French Counsels*, put the Son upon insisting on the Right of *Kingship*, to the great Calamity of the Nation; tho' the Subjects Swore Allegiance to him with an express *Salvo* for the Allegiance due to his Father, which, what ever some have thought, or affirm'd, was the only *Salvo* in the *Scotch King's Homage*, according to ancient Custom, for the Crown of *Scotland*.

(a) R. 1. An. 1189.

(b) Walsingham Ypod. Neustric f. 45.

(c) R. de dicto Col. 647. Comes itaque pistorum Ric. hereditario jure promovendus in Regem post tam Clerici quam populi solemnem & debitam electionem, &c.

To H. 2. succeeded his Eldest surviving Son, (a) *Richard*, but was not accounted King upon the Death of his Father. Authors (b) say, he was to be (c) promoted to be King by *Hereditary Right*. But as the former usage explains such Words, he deserv'd to be *elect'd* and *made King*; in which sense one of the Authors, who liv'd at the time immediately explains himself, mentioning his Coronation Oath after a *solemn* and due *Election as well of the Clergy as People*.

Before, he was at first Earl of *Poitou*, and then *Duke of Normandy*, but (d) not till he had been solemnly Invested with the Sword of that *Dukedom*. and *Bromton* informs us, that he accepted the Crown, upon (e) condition of his keeping his *Coronation Oath*, without undertaking

(d) Mat. Par. de An. 1188. Ducatus Norm. gladium suscepit &c.
(e) Bromton f. 1159.

dertaking which, the *Archbishop* charged him not to *assume the Royal Dignity*. He going to the Holy Wars after his being Crown'd, his Brother *John* would have seiz'd the Government as *Vacant*, but had no tolerable Pretence, the War being carry'd on with a *National Consent*. Upon this, it was adjudg'd by a * *Common Council* of the *Kingdom*, that *John* should be disseiz'd of all that he held in *England*, which might extend to such Right or Expectancy as he had in the *Crown*.

* Hoveden
de. An. 1194.
per commune
consilium
Regni defi-
nitum est de
omnibus re-
namentis
suis, &c.

Notwithstanding which, upon *Richard's* Death, the great Question came upon the Stage, Whether the Crown ought ordinarily to go according to the Right of *Proximity*, or of *Representation*.

(a) Wend-
over Dicen-
tes judicium
esse & Con-
suetudinem
illorum te-
pionum.

(b) Cujaci-
us de feudis.
l. 519.

(c) Grand
Cust. Cap.
25. Desche-
ance.

(d) Glanv.
tract. de le-
gibus &
consuetud.
regni Anglie
lib. 7. c. 9.
Licet præ-
moriatur
patri suo
&c. nulla
dubitatio est
&c. tunc
quidem, ita
hodie obti-
net inter
avunculum
& nepotem
quia melior
est conditio
possidentis.

The Right of Proximity was in *John*, Brother to *King Richard*: Upon this Right, or Reason of State, the *English Nation* receiv'd *John* for King, who, had the best Right when declared King, according to the (a) Custom of *Normandy* for Succession to that Dukedom, and as (b) *Cujacius* supposes, of most Nations, his was the best Title Priour to the Adjudication.

Foreigners were for *Arthur of Britain*, as having the Right of *Representation*, being the Son of *John's* Elder Brother: And this was the Right (c) according to the Custom in *France*.

But as to the Law of *England*, it appears by (d) *Glanvil's* account of the Law, as it was taken in the time of *H. 2.* that even for the Descent of Private Inheritances, it was doubtful, whether they ought to go to the Grandson, by the Eldest Son, who dy'd in the Father's Life-time, or to his next surviving Son; If, indeed, the Eldest Son had in the Father's Life-time done Homage to the Chief Lord for his Father's Inheritance, this was held to remove the doubt. And

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And *Glanvil* afterwards says upon the Question between Uncle and Nephew, That the condition * of the Possessor is the better.

According to which, King *John* having obtained Possession of the Crown, had it Rightfully, and *Arthur* had no Right to turn him out. *John* (d) being beyond Sea at his Brother's Death, sent over the Arch-bishop of *Canterbury*, and the Earl Marshal of *England*, to sollicite for his being admitted to the Throne.

These Great Men, with the assistance of the Chief Justice of *England*, prevail'd upon many to Swear Allegiance to *John*. And in a Convention

at *Northampton*, those Persons were Sponsors for (b) *John's* doing Right to all Men: Upon which

Condition, or in confidence of his performing what had been undertaken in his Name, the Earls and Barons Swore Fidelity to him against all Men. Yet after this, he was formally E-

lected in a full Convention of the States, where (c) the Arch-bishop declares, That no Man ought to

succeed another in the Kingdom upon any previous Reason, unless unanimously Elected by the

whole Realm, &c. But if any of the Royal Stock was more deserving than others, his Ele-

ction ought to be consented to the more promptly and readily,

Sir Thomas Craig, according to his skill in the *English History*, supposes * *John* set up only

by his Mother, *Hubert* Archbishop of *Canterbury*, and *Jeffrey Fitz Peters*, Chief Justice of *Eng-*

land. Notwithstanding what had passed in favour of *John* in the Convention; the † Archbishop at

the time of the Coronation, calls him but Earl. King *John* took the Oath appointed by the Ri-

tual,

* Vid. *Sir*

T. C. f. 319.

It seems he

had not ob-

served their

own Re-

giam Ma-

jestatem,

which is our

Glanvil.

Sir Thomas

says, *Glanvil*

prefers the

Nephew.

(a) *Wen-*

dover de An.

1199.

(b) *Wend.*

Quod jura

sua redderet

universis :

sub tali con-

ventione Co-

mites & Ba-

rones Comi-

ti memorato

fidelitatem

contra om-

nes homines

juraverunt.

(c) *Mat.*

Par. noverit

discretio ve-

stra, quod

nullus pra-

via ratione

ulli succede-

re habet in

Regnum;

nisi ab uni-

versitate re-

gni unani-

miter invo-

catâ spiritus

gratia ele-

ctus &c.

* *F. 317.*

† *Mat. Par.*

Dico de hoc

Comite, &c.

tual, which declares every King of England to be elected; but assumed the Royal Dignity, as his Predecessors did, with the (a) express condition of keeping his Oath.

(a) Wendo-
wer dein ad-
juratus est
ab eodam
Arch. & di-
strictis pro-
hibitus ne
honorem
hunc accipe-
re presume-
ret nisi in
mente habe-
at opere que
jurat per-
implere ad
hoc ille res-
pondens
promisit, se
per auxilli-
um dei, bo-
na fide ea
que jurave-
rat serva tu-
rum.

Having broken his Contract, and notoriously de-
parted from that end, for which, according to the Con-
fessor's Law expressly Sworn to by him, he had been Con-
stituted or created King; in making Warr upon his
People with Foreign Forces, with which he exercised
inhumane Barbarities, and as much as in him lay a-
lienating his Imperial Crown to the Pope; he, in the
(b) Judgment of the Court of France, as well as of
the States and People of England, fell from his Royal
Dignity, the Throne was (c) become vacant; and
during the Vacancy, the Administration devolved upon the
Barons: Whereupon they resolv'd to Elect a New
King, and sent a solemn Embassy to the King of
France, to send over his Son Lewis to be King of En-
gland, whose Wife was John's Sister's Daughter.

The Chief Inducement to this Election * seems to
have been that expectation, in which they were not
deceived, that the (d) Foreigners would desert John
for Lewis.

(b) Mat. par.
addit. q. 181.
the French
King's advo-
cates say, dare
non potuit
potuit tam-
en dimitti-
tere eam.

Tho' the Barons promised to Crown him King,
they seeing Grounds to dislike his French Temper and
Conduct, kept him upon his Good behaviour, with-
out a Crown. And having found by the Dying Con-
fession of one of his Confederates, that he had Sworn,
if he came to be once Crowned King, he would treat
the English as Rebels to their former Prince; they soon
sent this Probationer packing; yet did not hold John
to be King.

(c) Ib. va-
cantiaq;
regnum sine
Baronibus
ordinari non
debet unde
Barones ele-
gerunt &c.

After John's death, many of the greatest interest in
England while Lewis was here, and Eleanor Prince Ar-
thur's Sister (who according to the vulgar Notion
ought to have been Queen) alive in Bristol Castle,
Elected Henry, John's Son: but were far from think-
ing him King upon the Death of his Father; or from
repenting of what they had done to the Father; but
they thought it advisable to cut off Lewis his expecta-
tion of the Crown. To which end the Earl Marshal
of England Summon'd a Convention to Gloucester, where
he

(d) Mat. Par.
* Sr. T. C.
s. 182.
they call'd
Lewis the
Dauphin of
France to
the inheri-
tance of the
Kingdom as
being near-
est to John
by his Lady.

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regni ip
tradere
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c. 9.
3. post

hetold (a) the States, Tho' they had justly prosecuted the Father for his Evil Deeds, yet that Infant was innocent ; because he is the Son of a King, and our future Lord, and Successor of the Kingdom, Let us says he Constitute him our King.

At last all as with one Voice ; cryed thrice, let him be made King.

Here 'tis evident that he was not accounted King, till constituted or made, and was but a future Lord : and agreeably to this (a) Matthew Paris says, *They assembled in order to exalt Henry the King's eldest Son, to be King of England.* He took the Coronation Oath more than once and at (b) one of his Coronations, had the Confessor's Sword carried before him by the Earl of Chester, one of the Earls Palatine of England, for a sign that that Sword was not to be born in vain. He having trod in his Father's steps, the States were likely to have made good their Solemn (c) Denunciation the 17th of his Reign, of deposing him in a common Council of the whole Kingdom, and creating a New King, which as appears by (d) Bracton a very Learned Judge in that Reign, was no more than the then known Law of the Kingdom. Various were the events of a long Civil War, in which at last the Death of the great Darling of the Church and People, the then hereditary High Steward of England, and the Bravery of Edward Henry's Son gave him the Victory : which they who were on his side, and his own experience of the Consequence of his former Counsels, kept within bounds of Moderation.

Henry, to secure the Succession to his Eldest Son Edward, (e) had before that Success, caused many, and particularly the Citizens of London, to Swear to his Son as Successor.

After that, it should seem that a Parliament had made (b) a Settlement of the Crown. For in the 55th of his Reign a Writ was sent to London, The Execution of

regni ipsius cum iniquis consiliariis suis a regno depellerent, & de novo Rege creando tractarent. (d) Bracton lib. 2. c. 16. Rex autem habet superiorem Deum item legem per quam factus est Rex, item Curiam suam, &c. Vid. etiam ib. c. 24. & l. 3. c. 9. (e) Lib. de Antiq. leg. in Arch. Civ. Lond. An. 1263. 44. H. 2. (f) l. 54. H. 3. post ejus decessum rectis heredibus coronæ Angliæ.

(b) Mat. West. f. 277. and 279. Kingston Col. 2426.

(a) Mat. Par. Ut H. Regis fil. primogen. in regem Angl. exalterent.

(b) Mat. Par. An. 1236. 20. H. 3. insignum quod est Comes palatinus & Regem si obediret habeat de jure potestatem cohibendi vid. Wendover.

A Coronation at Cantuari. 3 H. 3. vid. etiam lib. de Antiq. Leg. in Archiv. Civ. Lond. A 117 A Proclamation 53 H. 3. declaring that he would not then wear his Crown and dispensing with the Services of the Citizens of London and of others.

(c) Mat. Par. Ipsi de comuni concilio totius

which

which was returned to the Parliament that Year at *Winchester*, and 'tis probable the like had been throughout *England*; in pursuance of which Writ, the *Mayer, Barons, Citizens*, and *Universality of the Commons*, Swore Allegiance to the King, after him to his eldest Son *Edward*, then to his Son *John*, after that to the right Heirs of the Crown, which plainly left the *Inheritance* as I have shewn it was from the beginning.

Upon the Father's Death, the (c) *Clergy* and *Laity* flock'd to *Westminster*, where they declared or received for King, *Edward*, then beyond Sea in the Holy War, so call'd: soon after this a great *Convention*, (d) of the *States* was holden in his Name: There a Chancellor was chosen, and other Provisions made for the Peace of the Kingdom, in *Edward's* absence, the Writ which they issued out, requiring the subjects in general to Swear allegiance to *E. 1.* says, *the Government was devolved upon him by Hereditary Succession*, (e) and the *Will of the Nobility*, and the *Fidelity performed*, or *Allegiance Sworn* to him.

Agreeably to which *Walsingham* says (a) They recognized *Edward*, their *Leige Lord*, and ordained him *Successor of his Father's Honour*. Tho' he was a very *Galant Prince*; yet, having taken ill Advice (b) being to cross the Seas, he upon a *Pedestal* at *Westminster-Hall-Gate*, with the *Arch-bishop of Canterbury* and the *Earl of Warwick* by his side, publicly ask'd *Forgiveness* of his People; (c) entreated 'em to receive him again at his return; and if he dy'd to Crown his Son King: which they who were then assembled consented to.

How much it was then known to concern a King, to keep to his part of the *Contract*, as he would have his People continue bound; appears by two great Authorities in our Law, of that time, *Fleta*, who, as to this matter, transcribes *Bracton*, almost *verbatim*; and the *Mirror* (d) of *Justices*, which speaks of the first institution of *Kings* among us, by *Election*; for what End they were elected, and what they were to expect, if they answered not that End.

E. 2. as (e) *Walsingham* informs us, Succeeded, not so much by *hereditary Right*, as by the *unanimous assent of the Nobility and Great Men*. He was for misgovernment

(c) Mat. West. Gilbertus & Johannes Comites nec non Clerus & populus, ad magnum altare ecc. Westm. ceteriter propterant. Ed. primog. Regis fidel. jurantes.

(d) Annales. Wav. f. 227. Hæta Convocatione omnium prælat. &c.

(e) Rot. Clauf. 1. E. m. 11.

(a) Walsing. l. 1.

(b) Mat. West. f. 430. 25. E. 1.

(c) Mufcipiatu mo quod si non rediero, in Regem vestrum filium meum Coronetis.

(d) Mirror. p. 8.

(e) Walf. f. 22. non tam iure hereditario &c.

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vernment, formally *Depos'd* or *Abdicated from the Regal Dignity*, as *Walsingham* has it; and his Son *Edward* was *Substituted*, or *Elected*, in his stead.

The Son indeed, tho' he had headed Forces against his Father, seem'd to scruple accepting the Crown, without his Father's consent. And *ex post facto*, after *Edward II.* had been *Depos'd*, and his Son elected with a threat, that if he refused, they would *Elect* some body else; the Father took some comfort at the *Election* of his Son, and as much (b) as in him lay, consented.

The Son it must be owned in a *Writ*, Cited by *Dr. Brady*, says, his Father *amov'd* himself, by the *Assent* of the *Prelates, Earls, Barons*, and other *Nobles*, and also of the *Communalty* of the whole Kingdom: Which being only in a *Writ*, issued out of the *Chancery*, can be of no force to limit or explain that *Act* of the *States*. And was but a civility or complement from the Son to the Father: What the *States* judged in the matter, will be very plain from the following Account, in a *Contemporary Authour*.

'*King* (c) *Edward* remaining in *Custody* at *Kineworth*, a *General Council* of the whole *Clergy*, and *People* of *England* was *Summon'd*, viz. of every *City* and every *County* and *Borough*, a certain *Number* of *Persons*; To treat and ordain with the *Great Men*, of the *State* of the *King* and *Kingdom*: in which *Council*, at the cry of the whole *People*, *Unanimously* persevering in that cry, that *King Edward* should be *Depos'd* from the *Throne* of the *Kingdom*; because from the begining of his *Reign* to this *Day*, he had misbehaved himself in his *Government*; had *Ruled* his *People* wickedly; had dissipated *Lands*, *Castles*, and other things belonging to the *Crown*; had by *Perverse Judgment*, unjustly adjudged *Noble Men* to *Death*; had advanced the *Ignoble*; And had done many things *Contrary* to the *Oath* taken at his *Coronation*; *Walter Arch-Bishop* of *Canterbury*, pronouncing *Articles* of this kind, by *Assent* and consent of all, *King Edward 2.* is wholly *depos'd*, and *Edward* his *Eldest Son*, (d) advanced to be *King* of *England*. And it is ordained, that from thence forth he should

(a) *Wals. f. 107.* Rex dignitate regali Abdicatur & filius substituitur.

(b) *Knighton. col. 255.* post multos ejulatus &c. 1.E.3. in 28.

(c) *Bib. Cot. Cleop. D. 9.* Annales de Gestis Britonum de An. 1326. convocatum est concilium Generale, &c.

(d) in Regem Anglie est substitutus

‘ should not be called King, but Edward of Carnarvan, the King’s Father.

‘ And immediately Messengers were sent from the Council to the say’d Edward the Kings Father, to Notifie to him what had been done, and to read to him the Articles upon which he had been deposed. He answer’d, he was detain’d in Custody, nor could contradict their Ordinances; but said he would bear all patiently.

(a) Stat. 1.
E. 3. Ruffal.

And it is observable, that a (a) statute of the Kingdom 1. E. 3. justifies the taking Arms against E. 2. while he was in Possession of the Throne, and indemnifies all Persons for the pursuit of the said King, and taking and withholding his Body.

(b) Rot part
50 E. 3.

(c) Sir T. C. of Succession f. 283, notwithstanding his being born out of the Jurisdiction of England he Succeeded his Grandfather in the Kingdom.

(d) F. 404

E. 3. who knew that himself came in by an Election of the States, being aware that if he should dye before any provision were made about the Succession, the Controversy concerning the right of Proximity, and that of representation might be revived, and the States of the Kingdom might determine as they thought fit, between the eldest surviving Son, and Grandson, by the eldest, who died in his Life time; obtain’d an act of Parliament, (b) whereby Richard, his Grandson by his eldest and best beloved Son, was declared or made, very Heir to the Crown.

Sr. Thomas (c) Craig, to suit his Rule of Succession, makes this King to have Succeeded meerly upon a known right of descent, without any priour settlement of the Crown, yet when it serves an other purpose he owns that he was (d) declared Heir by E. 3.

C H A P. XXXIX.

A Continuation of the State of the Succession, and Nature of the Hereditary English Monarchy; from R. 2. to E. 4. inclusive; giving an Account of the Controversie between the Two Houses of York and Lancaster, and the rise of the Mistakes about de facto & de jure.

(a) He began his reign An. 1377.

(b) Knighton f. 2683. Propinquiores aliquem dom had some Years beforeg iven him fair warning, telling him they (b) had an Ancient statute, according to which

Richard, (a) 2. following the Example of E. 2. had the same fate, of which the States of the Kingdom had some Years beforeg iven him fair warning, telling him they (b) had an Ancient statute, according to which

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which they might, with the common Assent and consent of the People of the Realm, Abrogate him, and advance some Body near a kin of the Royal Stock.

Henot profiting by this Admonition, the States were some (a) Years after put to the exercise of their Authority, and having adjudged that he (b) justly ought to be deposed, the whole States appointed Commissioners, for giving the Sentence of Deposition: And a Record speaking of it, says, he was deposed (c) for his demerits. The Act of State for this says, 'twas as (d) in like Cases had been observed by the Ancient Custom of the Kingdom.

This being done, Henry Duke of Lancaster (e) as the Kingdom was vacant, rose out of his seat and claim'd the Kingdom being void.

His claim was (f) als descendit be right lynes of the blode comeynge fro the Gude Lord Henry Therde.

The reason seems very plain, why he claim'd from H. 3. his being the last Inheritable Blood, which he could claim from: not from R. 2. because deposed, nor from Edward the 3d. because of the forfeiture of R. 2. declared or constituted his next Heir. Nor from E. 2. because of his forfeiture: Nor from E. 1. because E. 2d. had been his next Heir. H. 4th. Descent from H. 3. was the qualification for an Election, this was not as has been supposed, a strict right of Succession, (g) as he was the next then appearing; but he intituled himself to a preference, before all other Descendants of that Blood, as being a deliverer of the Nation from Richard's Tyranny, (h) he having with the help of his Kinsmen and Friends, recover'd the Kingdom, which was upon the point of destruction, through the defects of Government, and violation of the Laws.

This induced the (i) States and all the People, Unanimously to consent that Henry should fill the vacant Throne. And they (k) appointed all the Ceremonies of his Coronation. But as far as Proximity to the last King could infer a Right, he being a Grandson to E. 3. had it before Mortimer descended from Lionel Duke of Clarence under whom the Family of York claim'd. Tho' no (l) Layman of knowledg and Integrity, can be thought at that time to have questioned

(a) Rot. parl. 1. H. 4. n. 16.

(b) N. 5a.

(c) Rot. 801 v. die Coron.

Henry 4.

(d) Rot. parl.

(e) H. 4.

1. Rot. parl. 1. H. 4.

n. 54. so wal-

ling. Ypod.

Neust f. 156.

Regnum Ang-

lie sic va-

cana.

(f) Rot. parl.

Sup.

(g) Vid. the

debate at

large p. 127.

(h) walling;

sup. & Rot.

parl.

(i) Rot.

parl. n. 54.

Idem status

cum toto po-

pulo absq;

quacunq;

difficultate

vel mora ut

Dnx praefatus

super eos

regnaret u-

nanimiter

confer-

runt.

(k) Rot. Ser-

vicior. sup.

(l) Vid. in-

fra. the Ca'e

of Bishop

questioned

questioned those Grounds upon which *H. 4.* was declared King; yet since 'tis hardly possible that there should be any Government, which some will not be desirous to shake off, as the Jews did the Theocracy; it can be no wonder that some would colour their Ambition or Malice, under pretence of love to justice, and that they should object want of right, to disturb the most just and equal Government. What was at the bottom of Objections against *H. 4th* the title will appear by the Case of a true head of the Church Militant, Merk, or Mark, Bishop of Carlisle; who not being able as a Divine to make good his Argument against the receiving *H. 4th* for King; was resolved to justify it by dint of Sword, after he was made King.

(a) Rot. pat.

2. H. 4. rot. 4.

(b) Interli-

gari & con-

federati ad-

versario &

inimico no-

stri Regis &

regni sui de

Francia & ad

herentibus

ad eundem

adversar. &c.

(c) Nota

Richard's

name was

used only to

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French to o-

ver run this

land.

(d) Quod ip-

se Episcopus

unctus

esset.

(e) Nota &

consequen-

ter eccles.

Anglicanæ

per quam

&c.

In (a) the Second of *H. 4.* the Bishop was indicted, and try'd by a Common Jury, upon a special Commission, for that " he and other his Accomplices, among which there were two begotted Knights, *Blunt*, and *Sely*, were (b) Leagued and confederated together with the Adversary and Enemy of the King and Kingdom, the French, and their Adherents; Traiterously to bring the said Adversary into the Land of England, with intention to destroy the King, and all his Leige People of the Kingdom; And to new plant the Kingdom of England with our Enemies of France; that they in an hostile manner went up and down, making great destruction and slaughter; and without any Authority assuming to themselves Royal Power, Proclaimed (c) *Richard* to be King, and that they would not suffer *Henry* to be their Lord or King.

To this indictment the Bishop pleaded Church privilege as an (d) Anointed Bishop, which the Court Overruled: The reason for which is very remarkable; because The matters contained in the said indictment, concern the Death of our Lord the King, and the destruction of the whole Kingdom of England; and consequently the (e) manifest depression of the Church of England; by which he claims to be privileged, all which is high and the greatest Treason, and the crime of lese Majesty; nor ought any Man of right to pray in aid of the Law, or to have it, who commits such a crime, or intends to commit it, &c.

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His Plea being thus over ruled, the *Bishop* pleaded not Guilty; but being Convicted of the horrid matter contained in the Indictment, it seems he did not think this a fit cause to die for, and whether he Merited a Pardon or no by sincere Repentance, at least obtained one: In which it is observable, that he is called, (a.) the late *Bishop*: for this Restitution to the Peace, did not restore his Ecclesiastical dignity.

He who is still called the late *Bishop*, having a Pardon sent him, Petitioned to be delivered out of Prison; which was granted upon his finding Sureties for his good Behaviour; and four-undertook, that he (b.) should for the Future behave himself well towards the King and his People.

Thus the fear of Death (*) reformed this stiff Prelate; and made him engage to sit quietly under a Government which none but the Enemies to England, and their Adherents, endeavour'd to Subvert.

Still some were found calling themselves Englishmen, who for the like ends, with Mark, would do their utmost to Blemish H. 4th's. title and this occasioned Oaths of Recognition, thrice repeated 5°. (a.) of his Reign. First in a Council at Worcester, then in a great Council at Westminster, and after that in a full Parliament; where the former Recognitions, which were Voluntary Associations, were affirmed; (b.) tho' as is there said, there was no need of it.

By those Oaths, "They acknowledged the then King to be their Sovereign Leige Lord; to obey him as their King; and acknowledge
sent coment quil non buselgnoit my affermerent.

(a) Par.
*domo utmus
 eidem uuper
 Episcopo*

*Sectam pa-
 cis Sec.*

(b) Quod
*ipse amo-
 do se bene
 geret erga*

*Dominum,
 Regem et po-
 pulum.*

(*) Vid Sir
 T. C. Fol.
 327, where

*be com-
 mends his
 Learning
 Loyalty. &
 boldness.*

(a) This
*recited in
 the Petiti-
 ons of the
 Commons*

*Rot. par. 8.
 H. 4. P.*

*1. m. 4.
 (b.) D'un
 volunt &*

" the Prince his Eldest Son *Heir Apparent*, and
 " *Inheritable* to the Crown of England, to him and
 " to the *Heirs* of his Body. And for default of
 " such Issue to his Brothers and their Issue suc-
 " cessively, and (c) *Hereditably* according to the
 " Law of England, to (d) live and die against
 " all People in the World.

(c) Enbe-
 reliable-
 ment.

(d) Par
 viver &

merer en-
 contre tous

les Gents

Aff 30. H. 4.

occasional an other (e) 7^o, which

demonde. by the Council, and assent of the Lords Spiritual

(e) Rot
 par. 7. H.

Peers, and Clergy, and also at the earnest Petition

4. pars. 2. of the Commons, and by Authority of the said

m. 2. 3. Ad Parliament, declares, that the Kings Eldest Son,

ammoven- (a) shall be, and is, and ought hereafter, and now

dampenus to be, true Lawful and undoubted Heir, and Univer-

maceriam sal Successor of the Crown, and Kingdom of England

disceptati- and France, and all the Kings Dominions, what so-

onusc. old ever and wheresoever beyond the Sea, and also has

alt. ib. Breach of Right of Universally succeeding the King, in the

former said Crown, Kingdom, and Dominions; to have to

Oaths. him and the Heirs-male of his Body, and in default

(a) Fore of such Issue so inremainder to his Brothers;

& esse ac In a Charter pass'd in that Parliament, the

fore & esse (b) Inheritance of the Crown is entail'd upon

debere. the King, and the Heirs-male of his Body, then to

(b) Rot
 par. Sup. his four Sons, and the Heirs-male of their Bodies

successively.

(c) Rot
 par. 8. H. upon these different Settlements, that 5^o then

4. p. 1. m. remaining upon Record; therefore they Cancel

and make void the Letters patents of the entail 30.

The Perjury of some, and the Doubts rais'd
 by others, upon some of the expressions, in the
 30. H. 4. occasioned an other (e) 7^o, which
 by the Council, and assent of the Lords Spiritual
 and Temporal, to wit the Prelates, Great-men,
 Peers, and Clergy, and also at the earnest Petition
 of the Commons, and by Authority of the said
 Parliament, declares, that the Kings Eldest Son,
 (a) shall be, and is, and ought hereafter, and now
 to be, true Lawful and undoubted Heir, and Univer-
 sal Successor of the Crown, and Kingdom of England
 and France, and all the Kings Dominions, what so-
 ever and wheresoever beyond the Sea, and also has
 Breach of Right of Universally succeeding the King, in the
 former said Crown, Kingdom, and Dominions; to have to
 Oaths. him and the Heirs-male of his Body, and in default
 of such Issue so inremainder to his Brothers;
 In a Charter pass'd in that Parliament, the
 (b) Inheritance of the Crown is entail'd upon
 the King, and the Heirs-male of his Body, then to
 his four Sons, and the Heirs-male of their Bodies
 successively.

It seems the (c) next Year some doubts arose
 upon these different Settlements, that 5^o then
 remaining upon Record; therefore they Cancel
 and make void the Letters patents of the entail 30.
 and change, and amend that Settlement which
 they seem to have thought Defective.

1. In only declaring the Prince heir *Apparent* and *Inheritable* to the Crown; which was no more than to declare him, before others, qualified to succeed if the *States* should *Elect* him.

2. In declaring him *Inheritable* only to the *Crown of England*, without mentioning (a) its appurtenances; seeming to think that in Grants of this Nature; nothing would pass by Im-
(a) Rot. par. 8H.4. Purvours succeder en-
voz Suis dirz corone
Roiatms, &
Signiories,
pur les a-
voir ove
tousez leur
appurten-
ances, apres
vire decesse
aluy &c.
(b) Com-
muni con-
sensu Regni
luxia mo-
remejusdem
regni, &c.
(c) Heir
apparent
pour vous
succeder.

But to prevent all *Ambiguities*, they being, as is said in that Record, in a *Parliament* (b) according to the *Custom of the Kingdom*, for divers matters and things concerning the *King* and his *Kingdom*; the *King*, with the *Common consent* of the *Kingdom*, Enacts, that a new Patent be Sealed, Constituting *Prince Henry Heir* (c) *apparent* to succeed the *King* in his *Crown*, *Realms*, and *Dominions*; to have them, with all the *Appurtenances*, after the *Kings* decease to, him and to the heirs of his *Body*; and so in remainder to his three *Brothers* successively: whereby they had a larger *Estate* than the *Entaile* 7^o. which was to *Heirs-Male*.

Thus, by virtue of one or more *Settlements*, by Authority of *Parliament*, *H. 5.* succeeded, and yet it was thought a great instance of the *Confidence* the *States* had in him, that in a *Convention*, or *Assembly*, holden according to the *Ancient Custom*, in which they treated about (a) *Creating a new King*, some of the *Nobility* immediately *Swore Allegiance* to him before he had been *declared King*.

But this is to be observed, that whereas his *Father* died the (b) 20th. of *March*, he is said to be created *King* (c) on the 5th. of *April*: Death
(a) Pol. Virg. in ult. H. 5. Dr. Gales pref. scrips Saxon Dan. in quo de rege creando more Majorum agitabatur. Vid. etiam Stow in the Reign of H. 5. Mentioning this, and calling that Assembly a Parliament. (b) Walsingham. (c) Polydore Virgil.

cutting off the Course of his Glories, his infant Son, *H. 6.* came in under the *Parliamentary Entail*: but the administration was held to have fallen

(d) *Ror.* upon the States, (d) who, accordingly, after having
parl. 1. H. 6. declared *H. 6. King*, in full Parliament, pass'd a Patent, constituting *Humfrey Duke of Gloster Protector of the Realm*, *John Duke of Bedford Regent of France*, and *Henry Beaufort Bishop of Worcester*, and *Thomas Beaufort Duke of Exeter*, Governours of the Young Prince.

The Death of the brave *Duke of Bedford*, occasioned not only the loss of the Possession of *France*, but the raising the Family of *York* to a pretence, which in all probability had been Buried to this day, had not *H. 6th's Treacherous Ministers*, put him upon making *Richard Duke of York* (e) *Regent of France*, after being *High-Constable of England*, and *Lieutenant of Ireland*.

With these advantages, *Duke Richard* set up, under a Mask of Popularity, as if he only sought redress of Greavances, while himself was the only National Calamity.

As nothing but success could give him Colour of Title, he was fond to conceal his Ambition even from his own Party till the 26th of *H. 6th*: yet

(a) vid. after (a) that Acknowledged and Swore to *H. 6th's*
the Oath 29 right: and confirm'd it with the Sacrament, which
H. 6. Stow. Solemnities were to be Subservient to his Imaginary Divine right.

Tho' by his Frauds and Perjuries he often came within the prospect of a Crown, 38 *H. 6.* he was deservedly (b) attainted of high Treason and an Association with an Oath was entered into by the Lords, wherein every one severally acknowledg'd *H. 6.* to be his most redoubted Lord and Rightwish or Rightful, by Succession Born to

Reign.

Reign over him, and the Kings Liege People.

Where I cannot but observe, that Sir Thomas ^{Sir T.C. of} Craig admits this to have been by the Law of ^{the Succession f. 252.} God, Nature, and Nations. ^{It remains}

By that Oath to *H. 6.* every Lord engaged to ^{only to be} do his utmost for the *Weale and surety of the King's* enquired ^{who dyed} Person, of his most *Royal Estate*, and the very *Con-* ^{last that} *servation*, and continuance of his most high *Autho-* ^{was duly in} *rity*, *Prebeminence*, and *Perrogative*, and for the *Pre-* ^{vested and} *servation of the Queen*, and of *Prince Edward* ^{seisd of the} *Kingdom* his right *undoubted Lord the Prince*; that after *the Kings Death* he would take and accept the ^{&c.} *Prince for Sovereign Lord*, and after him the *Issue* ^{f. 342. I} *Male of his Body*; for want of such *Issue* any ^{premise to} *ther Issue of the Kings Body &c.* ^{this whole} ^{Controver-} ^{sy, that the} ^{Question} ^{now is not} ^{who was} ^{the true} ^{and lawfull} ^{King and} ^{heir of that} ^{most flour-} ^{ishing} ^{Kingdom} ^{for many} ^{Ages past} ^{&c.}

This *Association* not being general through-
out the *Kingdom*, had no great effect, not so
much from any belief the *Nation* had of *Richard's*,
being Injured, as from the Burdens a *Treacherous*
Ministry induce a weak *Prince* to lay upon the
Subjects. This made the *Commons of Kent*
invite over, from abroad, the *Duke* and his *Par-*
ty who had Fled from Justice; then the tide
turned, and the *King* became wholly in the pow-
er of the *Duke of York*, under whose awe and
influence a *Parliament* was call'd, where he laid
Claim to the *Crown*, with *Circumstances*, which
one would think, were enough to give any man
a *Face of Title*: And yet this pretended *Divine*
right, countenaced by *Providence*, was mightily
qualified by the courage of the *Parliament*, and
their regard to the *Constitution* of this *Monar-*
chy.

(a) *Rot. parl.* 36*H.* 6 *N. 11.* His claim was, (a) as Son to *Ann*, Daughter to *Roger Mortimer*, Son and Heir to *Philippa*, Daughter and heir to *Lionel Duke of Clarence*, Third Son to *E. 3.* whereas *H. 6.* was Grandson of *H. 4.* Son and heir of *John of Gaunt*, the 4th. and Eldest Surviving Son. After debate (b) *N. 12.* among the (b) Lords upon this matter, these Objections were agreed against *Richard's* pretence of Title.

1. The Oaths they had taken to the King their Sovereign Lord.

2. Acts of Parliament made in divers Parliaments of the Kings Progenitors, of Authority sufficient to defeat any manner of Title to be made to any Person.

3. Several Entails made to Heirs-male.

4. That *Richard* did not bear *Lionel's* Arms.

5. That *H. 4.* took upon him the Crown, not as Conqueror but right Inheritor to *H. 3.*

All Materially urged against this for *Richard* was.

1. That Oaths do not bind against *God's Law*; and that requires Truth and Justice to be maintained; but being a Spiritual matter, he refers it to any Spiritual Judge.

2. That there was but one Entail of the Crown, 7^o. *H. 4.* but that this was void against the right Inheritor of the Crown, according to *God's Law*, and all *Natural Laws*.

3. It could be Justified by Record, that *H. 4.* the 4th's. saying was not true.

Upon which tis Observable.

1. That *Duke Richard's* answer goes upon a manifest begging the Question; and supposing, that

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that he had a right which could not be Barred by
Act of Parliament.

2. That the Lords having mentioned several
Entails upon Heirs-male; we are to believe that
 there was then upon Record, the Entail upon
Heirs-male in the time of *E. 3.* pleaded by
 (c) Judge *Fortescue* in defence of the Title of (c) *vid.*
 his King *H. 6.* this we are the rather to believe, *unreasona-*
 because there was but one Entail upon *Heirs-* *bleness of*
male in *H. 4.* his Reign, nor is *Richard's* denial any *the new se-*
 argument against this it appearing that he thought *paration by*
 it sufficient for him to affirm any thing, and *the late B.*
 this was to pass for truth and Law. Thus he *of Worster*
 denies, that there had been any Entail but 7^o. *and Fortes-*
H. 4. forgetting that which had been made *cue's M/s.*
 5^o. and was amended 8^o. *H. 4.* and so very much *of this, de-*
 did he mistake, that he suppos'd the Entail 7^o. to *longing to*
 be upon the (b) *Heirs of the Body*, when it was *the Cot-*
 upon *Heirs-male* of the Body of the Son, and *ton Li-*
 for default of Male Issue to other Brothers and *brary, but*
 their Male-issue. *not now to*
there, unless
restored ve-
ry lately.

3. What the Lords say of *Richard's* not bear-
 ing *Lionel's* Arms, confirms another objection (b) *N.*
 against him made by Judge *Fortescue*, from the *15. to be*
 Bastardy of *Philippa*. Born while *Lionel* was beyond *unto him*
 the four Seas, and never own'd by him, nor did *and to heirs*
 she, or her descendants, till the time of this Claim, *of his Body*
 bear the Arms of that Family. *coming &c.*

4. *Richard's* right of descent, admitting there
 had been no illegitimacy, is laid as a right in
 Nature, but either this must be as the Laws of
 the Land Guide the course of Nature, or other-
 wise, we must go back in search of this right, if
 not as far as *Adam*, yet to some descendant from
 the Eldest House of the Saxon royal Family; to
 such at least, as could derive their Pedigree from

some House Elder than King *Alfred's*, which may be done at this day. Besides, if we should look back to a right in Nature, all the Kings, descendants from *H. 2.* from whom *Duke Richard* came

(c) *Elia-* as well as *H. 6.* must have been Usurpers, *H. 2d's*. Children having been begotten on (c) another man's Wife, who had been Devorced for her adultery, and therefore by God's Law could not Marry again: nor does it appear that the Devorce was from the contract. Or if this matter should admit of Debate, such of our Kings as descended from another common Ancestor, King *John*, must have been Usurpers, not only by reason of *John's* supposed Usurpation upon *Arthur of Britain* and his Sister, but in that his Children were begotten on (d) another man's Wife, who does not seem ever to have been Devorced: and besides, according to the Law of Nature it would seem, that *John* had a former Wife in being, for he was Devorced from her only for their being *Third Cousins*, as *H. 2d's*. Wife was from her first Husband, as they were Cousins in the 4th. degree. If the first Marriages in both cases were void, or voidable, it would have been only by the Laws of the *Romish Church*; but if those Laws shall make a *Natural right*, by Governing the course of descents, much more shall the Laws of particular Countries. If by the Law of Nature *Duke Richard* meant that which the consent of Nations made to pass for the dictates of Nature; according to (a) *Cujacius*, this Law of Nature is for the right of Proximity, which *John of Gaunt*, from whom *H. 6.* descended, had to his Father before *R. 2.* and *H. 4.* *John of Gaunt's* Son, had before the Son of *Lionel's* Daughter, supposing her Legitimate: And by the same rule that Sir *Thomas*

(c) *Elia-*
nor Wife
of Lewis
King of
France.
Mat. par.
de. An.
1150.

(d) Mat.
West. f.
1103.

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Craig and other Scotch Divine right men suppose that Bruce's Title was pre-ferrable to Baliol's, the House of York was to be preferred before that of Lancaster, upon the Seisin of the First Male of the Royal Family.

But here Sir Thomas Craig comes in with a *Sir T. C.* Terrible Dilemma, in relation to Edmond Duke of York, the only Surviveing Uncle to R. 2. *of the suc-
cession f.*

"If the right of Representation took Place in 335.
"England at that time, as most certainly it
"always did, then the Children of Lionel were
"to be preferred to Lancaster, as being a degree
"nearer, but if no regard was due to the right
"of Representation, York was one degree nearer, as
"being the Uncle of Richard, while Lancaster and
"Richard were only Cousins.

Where,

1. He admits Baliol, who had the Representative right of the Eldest Sister, by the Law of the Dominant Fee, which ought to Govern, to have had the only Legal Title.

2. He Injudiciously makes the Children of Lionel and of John of Gaunt, who were Brothers Children, to stand in different degrees; when the only Question was of Preference in the same degree.

3. As to the Title of Edmond by proximity, he being in England, and making no Claim, was evidently concluded by the act of Settlement, to which there was his own consent expressed or implied.

4. Sir Thomas but a little before, had own'd f. 334:
that Edmund dyed without Children, and in Fact 'twas 3^o. H. 4. so that if Edmund could not have had any right after the Settlement of the Crown

Crown upon *H. 4* by Act of Parliament, from the 3d. of his Reign, *H. 4.* was Lawful and Rightful King upon the rule receiv'd in Scotland in *Bruce's* case: yet see how Partial men are to their own Country.

f. 334.

He agrees with *Doleman*, that the Family of *York* had no pretence to the Crown when King *Richard* was depos'd.

But says he,

"*Philippa* and her Son *Roger*, or her Grand-son *Edmund*, was the true and Lawfull Heir of the Kingdom, and next in Blood to *Richard*, who dying without Children, the Succession devolved to his Sister *Ann*, who was Wife to the Earl of *Cambridge*, and so that right of Succession which formerly belong'd to the *Mortimers*, pass'd unto the Family of *York*, otherwise *York* being only the 4th. Son of *E. 3.* was by Birth-right only after *Dancaster*, neither had he ever made a Claim about the Succession, either of his Father, or of his Nephew, by his Brother *Edward*.

Where,

1. He makes *York* the 4th. Son of *Edward* the Third, robbing *John* of *Gaunt* of his Birth-right.

2. He admits that *York* made no Claim, and as if he continued his mistake of *York's* standing in the Place of *John* of *Gaunt*, supposes he might have Claim'd the succession of his Father in right of *Proximity*.

3. To divert the enquiry into the Resemblance to the dispute between *Rabiol* and *Bruce*, he makes *Philippa* and her Son one Heir.

4. If *Philippa* was not the Bastard Daughter of *Lionel*, as she had been reputed, she could not be nearer

earer in Blood to King *Richard* then *Henry*, they both being in the same degree; and consequently the Question returns, whether, in the same degree, Males are to be preferred before Females, or the dignity of the Elder House is to prevail.

According to the Practice in *Scotland*, the first Male, tho' of a younger House, has the right; according to the Law of *England*, the Dominant sex, Female of the Eldest House is to be preferred, in an ordinary course of descent, but the States of the Kingdom in such case, have Rightfull power to determine according to the exigencies of the Publick.

If therefore *Richard Duke of York*, having no Colour of Claim from the Law of Nature, in any of the respects hitherto consider'd, meant the Law of *reasonable Nature*; what reason can be assigned why the Eldest issue of a King's Eldest Child, whether that issue be an infant, or void of understanding or Humanity, ought Universally to succeed to Crowns, before the Kings surviving Son, whatsoever be his Merit, or the necessities of the Publick?

And why should not a Moral incapacity in this sense be a Natural one?

The Learned *Grotius*, who must be agreed to be a much better Authority than either *Sir Thomas Craig*, or the more Subtle *Sir George Macbenzy*, says: "For the Niece, from the 24-
Elder Son to exclude the younger, cannot hold in hereditary Kingdoms; For that gives only a capacity to succeed. But of those that are capable, regard is to be had to the Priviledge of the Sex."

If

Grotius
de jure Bel-
li & Pacis
L. 2. sec

If the great Lawyer *Fortescue*, who as may be seen by the (a) Rolls of the *Queens Bench*, was *Chief Justice* there, from before *Richard's* presence to the Crown, to the end of *H. 6th's* Reign may be allowed to speak the Sense of the Learned in that time; they held the *Power of the Prince*

(b) For- (b) to Flow, or be derived from the People, according to which it must have been taken to be more according to *Natural right*, that the People who appointed the Succession in any Family, should Govern and vary it, as they saw occasion; that from their Pitching upon a Person, or Family, they should be for ever debarred from doing Justice to the Demerits of one, and to the Merits of another in that very Family.

I am sure the Learned *Grotius*, who distinguishes (c) *Civil Succession* from *Hereditary*, says (d) an *Hereditary Kingdom* is one which was made so by the Peoples free consent; and in such Kingdoms he supposes several rules of Succession, by Guessing at, or presuming the will of the People. If *Duke Richard* would have admitted the Law of the Land to Govern the course of descents and Succession to the Crown; then 'tis evident beyond Contradiction, that *H. 6.* came in by a Legal and Natural course of descent; and however, according to Laudable Custom from the beginning of this Monarchy, Acts of Parliament may alter the Course.

(a) For. And yet the then Timorous (a) Lords, without Concurrence in that matter of the *Stout Commons*, agreed, that the *Duke's Title* could not be defeated; but they thought not themselves had made unto the *Kings Highness* &c. *Sav'd*, and their Consciences therein cleared, it was agreed that the said Mean should be opened, and declared to the *King's Highness*.

discharged from their Oaths to H. 6. unless he would consent to the *Mean*, or expedient they found out, which was for the *King* to keep his *State and Dignity Royal during his Life, and the Duke and his Heirs* to succeed him in the same: to which both the *King* and *Duke* consented. But neither the *Kings* Right to the Possession, nor the *Duke's* to the Reversion, arose from their private agreement, but from the (a) Authority of *Parliament*; according to which, the *King* had as much right (b) to the Possession, as the *Duke* to the Reversion.

And it remains as the Judgment even of that *Parliament*, what ever Force or awe were over it, that *Richard Duke of York* had no right to the Possession, and neither was *King*, nor of right ought to be *King*, till *H. 6.* should die, or cease to be *King*. Nay even *E. 4th's* Judges owned, that *H. 6.* was not a meer Usurper because (c) the Crown was Entailed to him by *Parliament*. As a Judgment upon *Duke Richard's* pretence of Title, contrary not only to National, but Divine Authority, giving Sanction to the Laws of the *Kingdom*, and his own Oaths; he died within sight of the Promis'd Land.

But (d) soon after his Death, his Son *Edward*, having less to answer for, and success to recommend him to the People; upon more Specious pretences, succeeded *H. 6.* by a manifest Election.

Tho' he and his Father had, upon the agreement Establisht in *Parliament*, Sworn to be true and the said Lordship of Ireland, during his Life Natural. And furthermore by the same avis & Auctoritie, wolle, consented and agreed, that after his death, or when it shall please his Highness to ley from him the said Coronets &c. or thereof ceasseth &c. (c) Baggots saje 9. E. 4. Carle Corone fuit nullu aliu per *Parliament*. (d) An. 1460.

(a) Res.
Parl.N.

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(b) N.
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to H. 6. during his Life, or till he should freely quit his Crown; the Dread of their Arms got a Liberty for 'em to enter their Protestations, that this was upon the express condition that the King performed his part, but if he should compels or imagine the Death or Destruction of the Duke, or his Blood, should forfeit the Crown: and indeed it seems that the first Acts of Hostility after this agreement, were committed by the Queen, and others of the King's Party; who in attempting to rescue him out of the Custody of the Duke of York, put an end to his Pretensions with his Life.

(a) *Stow.* His Son Edward (a) having routed the Earl of Pembroke, and other the King's Loyal Subjects in a Battle near Ludlow, March'd up to London where he was received with joy on the 28th. of February; then he calls a great Council of Peers to whom he opens his Claim upon the King's Breach of the Articles. After the Lords had con-

(b) *vid.* sidered of the matter, they (b) determined by Notes upon Authority of the said Council, for as much as King Henry the Earl of Arundel, contrary to his Oath, Honour and Agreement had Violated and Infringed the order taken and enacted in the last Parliament, and also because he was insufficient to rule the Realms, and unprofitable to the Common-wealth; he was therefore by the aforesaid Council deprived and dejected of all Kingly Honour, and Regal Sovereignty. And incontinent Edward Earl of March, was by the Lords in the said Council Assembled, Named, Elected, and Admitted for King and Governor of the Realm. After this the same day, the consent of the (c) Commons People was ask'd in St. John's Fields, where a great Number were Assembled: the Lords being informed of the Consent of the Commons, acquainted the

(c) *ib.*

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the said Earl with their Election, and Admission, and the Loving Assent of the Commons. The next day he went to Westminster, where his Title and Claim to the Crown was declared, First as Son and Heir to Richard his Father; right Inheritor to the same. Secondly By Authority of Parliament. Thirdly (a) And Forfeiture committed by H. 6th.

The (b) Commons being again Demanded, if they would admit and take the said Earl, as their Sovereign Lord, all with one Voice cried Yea, Yea, which Agreement Concluded, he was then Proclaimed.

(a) 3d. not menti-

ioned in those notes, but in Hollinghead f. 663.

(b) Notes upon the Earl of S's Speech Sup.

Here it is Observable,

1. That Edward did not Claim upon any Title Prior to the Settlement in Parliament 39. H. 6. and therefore in effect, Claimed as Adopted Heir to H. 6. as H. 2d. had been to King Stephen.
2. He alledged against H. 6 Forfeiture by Breach of the Contract Establish'd in Parliament, and a Moral Incapacity in him to Reign.
3. Notwithstanding this, he did not set up as King, before a Solemn Judgment pronounced against H. 6. and in Favour of him, and the Formallity of the Publick Election.
4. It appears, that tho' he came to London, and was possessed of the Head and Strength of the Kindom and H. 6 had, in Effect, Abdicated; he, who according to the Modern Notion of the Successionaries, should have been King upon the Death of his Father, was not King, nor so reputed by his own Party, till all those Accustomed Ceremonies were over, the last of which was

on

(a) Hol- on the (a) 4th. of March. Now if it shall prove, linghead that in the Judgment of King Edward's own Par- 663. After liament, his right to turn H. 6. out of Pos- the Earl of session was founded in H. 6th's. Breach of the Con- March had taken upon trait, Establish'd in Parliament; that E. 4. was him the Go- not King till the 4th. of March; and that no Act- vernment committed against him before that day, was Treason, nor was there or could there be Treason against his Father, who never had been King; then it will appear, that some Consent or Election of the States, or People, was essentially necessary to make a King, even of one who had, or at least was suppos'd to have, all the Right that Descent could give him; and the other King must have Forfeited, or ceased to be King, before such Right could be duly Claimed. But,

1. The Act of Parliament declareing (b) E. 4th's. title, is held to be a restitution to the same: so that the very Title, or Right, was as if it had been extinguished.

2. It is in that Act (c) Particularly insisted on, that H. 6. had declared before Witness, that he would not keep the Contrast Established in Parliament; and is expressly charged with the Breach of it.

3. E. 4th. (d) is adjudged to have been in Lawfull Possession of the Realm, upon the 4th. of March; and (on that day) lawfully Seiz'd, and Possessed, but not before; and then the exercise of the Royal Estate by E. 4. and a motion of H. 6. are declared Rightwise, Lawfull, and according to the Laws and Customs of the Realm.

4. That Act says, the Crown ought to have descended to Edmund Mortimer, Edward's Ancestor, and after his decease to the next Heir of Blood; if the same Usurpation had not been

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Committed. Where according to that Act, the Crown did not descend to any one of *Mortimer's* Family, while the Person who they suppos'd to have Usurped the *Crown*, or any descendant from him, kept Possession.

5. *Edward's* Parliament held his Father to have been no more than Duke of *York*: And tho in the (a) Act Attainting *H. 6.* he is Charged with the Murther of *Richard* Duke of *York*; the first Treasonable Fact in *H. 6.* and others, is laid in Levying War, on the 29th. of *March*, and imagining to Depose their Sovereign Lord *Edward*, who had been Declared King on the 4th. of that *March*: And *H. 6th.* Forfeiture is laid in Acting against his Faith and Allegiance to his Sovereign Lord: Whereby they plainly shew, that as there could be no Treason against the Duke of *York*, because he never was received for Sovereign Lord; neither could there have been any against *E. 4.* unless he had been so received.

(a) *Rel.*
Parl. 1. E.
4. M. 17.
convictio
quorundam
Dom. &
al. autho-
ritate Parl,

6. The Proceedings at that time being the colourable Authority, for the late mistaken Notion of King *de jure*, & *de facto*, they who have made such a Noise with both must yield, that there is not the least shadow of Pretence from the Judgment of those Times, that there was a King of *Right*, at that very Time that another was in *Fact*: It going no farther, than that the Person who was King, ought not to have been King; but while he was King the other was none. And it amounted to no more; but that the *States* of the Kingdom had been unjust in giving the Crown to *H. 4.* and making his the Reigning Family, when they ought to have given it to another *House*: Not but that their Declaration and Judgment, was the only Rule Authorized by God and the Laws, for the Obedience of the Subject, and the Exercise of *Regal Power*.

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7. The Judgment of E. 4ths. first Parliament, whatever hard Names they gave that Family on which they Trampled, was so far from being Authority, as has been (a) pretended, against the receiving his late Majesty of Glorious Memory,

(a) Vid. upon the former King's Breach of the Original or The De-Common Law Contract, confirmed by several Declaratory Statutes of the Kingdom, and the Solemn Oaths of our Kings; that it is express for the (b) p. 128. Eviction and Amotion of one King, upon a breach of Contract established in Parliament, and the setting up another by an Election.

Death of And it is observable that the Act 1^o. (c) E. 4. R. 2. and which confirms several Judicial and other Acts, consequent of such as it calls Kings only in Fact, says other than by E. 4. by Authority of any Parliament holden in their Times; plainly admitting that Authority to be sufficient in it self.

King by H. 6. coming again into Power, because of a Conscience Possession, with such a consent of the People as by Nature, made E. 4. King; was (d) formally Elected at the by Custom, Tower: And in H. 7ths. time (e) was adjudged to have had his Attainder purged, by his Referring Re-adeption of Power; which seems not to have been to the Parliament. till he had been Re-elected. Then H. 6. calls a Rot. 1. E. 4. Parliament, where he in his turn Attaints the (b) Rot. Adherents of E. 4. and, as we are to believe, Parl. 1. E. 4. M. 7. & himself: But the (f) Record of that having been 8. and that conceal'd, and the Rolls Lost, it appears not God had whether it was for any Act committed before given Ed. H. 6ths. Re-adeption of Power.

of Evi- The Tide again (g) turning for E. 4. all the Acts on. That of Parliament are revers'd, and Declared or made, the Amotion, &c. is void. From the time that E. 4. had been Declared King, he was held to have continued the Possession.

(c) 4. E. Stow. f. 412. (d) 1. H. 7. f. 4. 6. (e) referred to 1^o. E. (f) Rot. Parl. 17. E. N. 34. 4. vid. Rastal. cap. 6. 4.

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session of the *Regal Dignity*, tho withheld from the exercise of the Power; therefore *H. 6.* from the first Admission of *E. 4.* to the Crown, was accounted no King, and his Parliament, to be but a *Pretended Parliament.*

C H A P. XL.

Of the State, of the Succession and Nature of this Hereditary Monarchy, derived down from E. 4 to our J. 1st. of Scotland the 6th. with the Judgment of himself and his first Parliament, of the contract between Prince and People. What Proceedings Sir Thomas Craig allows upon the Princes Breach of his Part.

E. 4ths. usage of *H. 6.* was repaid to his Sons, by their Uncle, *R. 3.* Some will have it that he made them away, as indeed it is intimated in the Act Attainting *R. 3.* but 'tis certain that they were Bastardized in a Convention, whose Acts were by a Parliament (a) after Richard was admitted King, Declared for Truth, and not to be doubted; and there are (b) Authoritys to induce the Belief, that Edwards Sons were really Bastards, by Reason of the Father's Precontract: However the (c) Convention declared, that they were not to Reign because they were Infants, and their Mother Ignoble, and Married Clandestinely without the knowing and Assent of the Lords. George Duke of Clarence, the next Brother to *E. 4.* having been Attainted in a Parliament of *E. 4.* they "having singular confidence in Richard's particular merit, had chosen in all that in them was, and by that their certain Writing, chose him their King and Sovereign Lord. To whom they knew of certain, it appertained of Inheritance [to be chosen].

(a) Rot. Parl. 1. R. 3

(b) Vid. Buck's Hist.

(c) Rot. Parl. 1. R. 3

And observing, that tho the Learned in the Laws and Customs knew his Title to be good, the most part of the People were not sufficiently Learned in the Laws and Customs; they Declared " that the Court of Parliament is of such Authority, and the People of this Land of such a Disposition as Experience Taught, that Manifestation and Declaration of any Truth or Right made " by the three States of the Realm Assembled in Parliament, and by the Authority of the same, maketh " before all other things most Faith, and certain quieting of mens Minds, removing the occasion of Doubts " and Seditious Language. Therefore by the Authority of that Parliament, it is pronounced and " Declared, that their Sovereign Lord the King, " was, and is, the very undoubted King, as well " by Right of Consanguinity and Inheritance, as by " lawful Election, Consecration, and Coronation. " And they Enact, Establish, Pronounce, Decree, " and Declare Edward the Kings eldest Son Heir " apparent, to him and his Heirs of his Body. Any man who shall compare that Act at large with the former Presidents; must see that it was Penn'd with great Wisdom, and Regard to the Constitution of the Monarchy.

And tho, out of an usual Complement to the prevailing side, R. 3. has generally been represented as a Monster in Person and Nature, the learned (a) Buck has made it doubtful, which was the most deserving in all things, R. 3. or H. 7. Certain it is, that tho the Crown had, by Authority of Parliament, been settled in remainder after H. 6. upon (b) Duke Richard and his Heirs, and that Duke's Grand Daughter was alive and Marriageable, in the Reign of R. 3. her supposed Right gave him no Disturbance, and his Possession was very quiet, till he disobliged the Duke of Buckingham.

(a) Bucks
Hist. of
R. 3.

(b) Rut.
Parl. 36.
H. 6. N.
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ham (who was the great Instrument of setting him up) by rejecting his Claim to be *High Constable of England* : which was an Authority dangerous to be trusted in the Hands of so popular a Man : Nor could the Duke and his Faction expect to succeed in their Conspiracy, without the support of *French Forces* : And, accordingly, applied themselves to *Henry Earl of Richmond*, afterwards *H. 7.* with whom the Duke of (a) *Brittany* had for some years kept even *E. 4.* in awe.

(a) *vid. Comines junie Prince de Engleterre c*

Henry was glad of the opportunity : And to strengthen his Interest, agrees with some of his Party to Marry the Daughter of *E. 4.* but was far from making any Claim in her Right.

It is very probable that one of *E. 4.*'s Sons was then alive : Be that as it will, as appears by Statutes 1. *H. 7.* his *Parliament* held that he Landed with Title : And *R. 4.* being deserted, and slain in the Field of Battle ; that opposition to *Henry* was, by Authority of *Parliament* adjudged *Treason*, against the *Sovereign Lord* of this Land : and *H. 7.* was held to have recovered his Right.

After this when *H. 7.* met (b) his first *Parliament*, he, with his own Mouth, told the Commons in full *Parliament*, that his Accession to the Right and Crown of England, was as well by just Title of Inheritance, as by Gods true Judgment, in giving him Victory over his Enemy in the Field. In which, bating the Settlement in the time of the Confessor, *H. 7.* claim'd, as *W. 1.* did by the Inheritance of Consanguinity, and that success which gave him the preference before others of the same Blood ; especially, since that Enemy, whom he subdued, was held to be an *Usurper*. Thus 'tis evident, that he was accounted, before *H. 7.* lan-

(b) *Raz. Parl. 1. H. 7. Idem Dominus Rex prefatus in suis communibus ore suo proprio eloquens ostendendo suum adventum ad jus & Coronam Angliae fore tam per ipsum titulum hereditariae quam per verum Dei Judicium in tribuendo sibi Victoriæ de inimico suo in Campo.*
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ded; but if it be truly considered, his Usurpation, if any, must have consisted in the Tyranical exercise of his Power, which the *Duke of Buckingham* had urged to justify his Arms; and not from the assuming it: And that *H. 7th.* Sovereignty was founded in that *Election*, of the Body of the People, without a formal *Convention*, which pitch'd upon him as a fit person, to deliver them from their real or imagin'd Yoke.

This will appear beyond contradiction, from the proceedings of that *Parliament* upon his claim, and the moral impossibility of giving it any other colour. However, the Parliament took to its self full Authority in the Matter; and (a) declaring their hopes that it might be to the *Pleasure of Almighty God, the Wealth, Prosperity, and Security of this Realm*, by Authority of Parliament settles the Crown upon *H. 7.* and the Heirs of his Body, exclusive of all others.

(a) Stat.
par. 1.
H. 7. Rot.
Parl. II
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After which, indeed, they desired him to Marry Elizabeth, *E. 4th.* Daughter, (b) that by Gods Grace there might be Issue of the stock of their Kings.

(b) Rot.
Parl. 1. H. 7
vid. Sir
Th. Cs.
mistake. f.
249. As if
the Seizure-
ment were
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Issue by
that Mar-
riage.

But then special care is taken, that neither the King or the Children of that Marriage, should be thought to derive any Title from her: For tho' they, by Authority of Parliament, repeal her Bastardy declared 10. R. 3, they, by (c) the said Authority, ordain that the then Act, ne eny clause in the same, be hurtful or prejudicial to the Act of Establishment of the Crown of England, to the King and the Heirs of his Body begotten.

(c) Ib. N.
18.

After this *H. 7.* obtains a Bull from the Pope, which says (d) the Kingdom belong'd to him, not only by right of War, norious undoubtedly (e) nearest Title of Succession; but also by the Election of the Prelates, Peers, Great-men, Nobles, and the Commons

(d) Bth.
Cor. Cleo.
E. 3.
(e) Ib. pro-
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of all the Kingdom, and by the known, and decreed Statute and Ordinance of the three States of the said Kingdom of England (a) in their Convention call'd a Parliament. (a) *in*
Ipforum

According to this, tho his Reign was held to have begun before he had been declared King, it was, as I shall have occasion to observe in other Cases, only by way of Relation to that Solemn Investiture, without which he had never been King. That his Right must have been derived from a plain Election, is very evident; for, (b) *Vid.*
the Book.
H. 7. f. 4.

1. He had been (b) attained in a Parliament of R. 3. and if the Royal Blood could not be so attainted, but when ever a former King ceased to be King, the Person so attainted, standing next to the Crown, should have his attainder purged, by the descent of the Crown; then according to them of this Opinion, the Earl of Warwick, Son to George Duke of Clarence, who had been attainted by Parliament in the Reign of his Brother E. 4. must have had the right before H. 7.

And yet, if we regard the distinction between proximity and Representation, H. 7. was *the Bull*
Sup. in that respect more truly (c) the next heir to the Crown, but in what sense soever the Resolution of the Judges (d) 1. H. 7. has been taken, they held the disability to cease *eo facto*, (*) that he *il prist* sur took upon him the Royal Dignity to be King; not by any imagined right of descent. (c) *Vid.*
the Bull
Sup. (d) *Year*
Book 1. H.
7. f. 4. Eo
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desire roy,

H. 6. and applied H. 7. (*) Sir T. C. f. 296. the Stain of this said of Blood ceases in the Succession of a Crown f. 378. 379. 380. 385. supposes a Legitimation by Act of Parliament and a supervening Marriage gave a Right of Succession to the Crown.

At least, one of the Children of E. 4. was alive when H. 7. came to the Crown.

3. Tho' in truth, it appears by the Statute reversing the attainder of H. 6. to have been the Judgment of H. 7th's. Parliament, that H. 6th's. Family; of which he was, ought to be the reigning Family; yet H. 7. had no preference to preference in that Family, but from his merits, and the Peoples Choyce. For,

1. His own Mother, who stood before him upon that Line, was then alive.

2. He came from a Bastard Branch, his Ancestor being the Bastard-Son of John of Gaunt, during former Marriages on both sides; tho'

(a) Rot. Parl. 20. there was a Legitimation (a) 20. R. 2. that neither did, nor was intended to extend to Capacity for the Royal dignity: However H. 7. is in Inst. F. 36.

(b) Rot. per l. 3. H. Lord.

7. m. 15.
The attainder of the E. of Line.

Certain it is, that he was never in his time, or after, Authoritatively, declared or accounted, King only in Fact.

And they who will take the distinction of King in right and in fact, from the last Parliamentary Declaration in the matter before the Revolution, must hold, that the Kings of the reputed Elder House, who Reign'd next before the Restitution of the younger House, which had been settled the Regnant Family for three Reigns successively; were Kings only in Fact, but not of right. And yet it is not to be thence inferred, they were to be accounted Usurpers, for not standing first upon that Line which ought to have had the preference. But when any Prince of either Branch

had

had Justice done to his Merits, who would not say, that he ought sooner to have been King?

H. 8th. (a) came in under the Authority of Parliament, which had made *H. 7.* the head of a new Succession, as the Crown had been Entailed upon him and his Issue. And tho' *H. 8th's.* Mother was Daughter to *E. 4.* whatever Dr. Brady

(b) Suggests, it has appeared above, that particular care was taken by *H. 7th's.* Parliament, that the Crown should not be thought to descend by Proximity of Blood, but that the right of Succession was to be derived from Parliamentary Authority.

It is beyond Contradiction, that in the Judgment of *H. 8th.* and his Parliaments, the Inheritance of the Crown was variable as Parliaments should determine; and that no Man could rightfully succeed, without such appointment.

By Authority (c) of his Parliament 25^o. the Marriage with Catherine, Mother to Queen Mary, was declared void, and that with Ann, Mother to Queen Elizabeth Lawful, and the Children made Inheritable, according to the course of Inheritance, and Laws of this Realm, first to Males, then to Females. 'Twas made high Treason by Writing, Print, Deed or Act, to attempt any thing to the Prejudice of that Settlement: and the Substantance of an Oath was appoined, (d) afterwards made more express, by another Statute, repealing all Oaths to the Contrary, and engaging the Subjects in maintainiug that Act of Succession, to do against all manner of Persons of what Estate, Degree or Condition so ever be be.

Sir Thomas Craig thinking these two Statutes of great Service to his Point, I must not pass by his Blunders about them. Having mentioned the Statute of *E. 3.* about Children born in Foreign parts,

parts, which has an exception for the Kings Children, he says,

f. 246. " Here the Law of Succession in the Crown, is evidently distinguished, from the Law of common Succession, or the Succession of private Men. Then, mentioning the Settlement above " by the Statute 25. H. 8. he observes, that after the particular Limitations, the remainder was to the right Heirs of his Highness for ever, by course of Inheritance, as the Crown of England has been accusom'd to go.

" Which Statute all the Nobles, &c. Made or took a Corporal Oath, to fullfill, maintain defend and keep, to their cunning, wit, and uttermost of their Power, which Oath was enacted, and enjoin'd by a Statute in the 26th.

He adds,

f. 257. " Any Person who compares these two Statutes together, must observe these two things in them. That the Succession of the Crown of England descends the same way that other Inheritances use to do, by the Law of God, Nature and Nations. And that those Laws of Succession have obtain'd from the beginning of the Kingdom, and have been confirm'd by constant Custom.

Tho' here he nam'd a 3d. Act, his meaning here was plainly of the two Statutes 25. E. 3. and 25 H. 8. but 'tis far from being clear upon comparing those two Statutes, that Succession to the Crown, and to private Inheritances, is the same way: for that of the 25. of E. 3. shews a manifest Difference; and this Sir Thomas is so sensible of, that he is forced immediatly to contradict his first Observation by his second, That the being Born out of the Kingdom does not take place in the Successions to the Crown.

f. 274. But

But even that Observation may be excepted against, and that upon the Law of the 12 Tables, from whence he would have under the word *Infants* or *Children of the King*, to be comprehended *Grand-children*, tho' *extrafamiliated*; that Law speaking of *Deeds in favour of certain Persons not confin'd to certain Degrees, but extending to all descending of the same stock*: which puts not only all *Children* into the same Capacity of succeeding, as the *Civil Law* did; but allows *Children* in a more remote degree to be equally entitled to the *Privilege of the Stock* or *Royal Family*: And what advantage could *Sir Thomas* or his *Editors* get by that? In truth no more than a justification of those *Laws of Succession*, which in *Sir Thomas* his Words, tho' far from his Sence, have obtain'd from the beginning of the Kingdom, and have been confirm'd by constant Custom. This shews that the Nation could not have been charged with *Perjury*, as *Sir Thomas* supposed, if after the Oath Enacted 26^o. H. 8. in Pursuance of the Act of Settlement 25^o. the People should, by virtue of a subsequent Act of Parliament, have sworn to receive a Successor Nominated and appointed by *Queen Elizabeth*.

But *Sir Thomas* has not yet done with the Statute of 25. H. 8. on which, as if it were the last upon the Subject, he makes the Hinge of the controversy to turn.

He takes notice of the Preface, as he, or his Translator, calls the *Preamble*, which says, 'tis a *Natural inclination of every man to Provide for the Security of his Succession*. Therefore the *Lords and Commons* beseech the *King*, to provide for the perfect security of him, and his most lawful Successor and Heirs. They reckon'd it part of his *Regal Office*

f. 274.

f. 141.

f. 405.

406.

407.

408.

fic to settle the Affair of the Succession, and to declare his undoubted Successor, and say, they could not doubt of his Princely Heart, Wisdom, and Affection, to provide for the security of himself, and his Heirs and Successors, in whom also is united and knit, the only meer Inheritance and Title of this Realm, without contradiction, &c.

Several weak Inferences Sir Thomas makes from this Preamble, but that which seems of most weight, and which he places in the Front, is the latter part, which he represents as if the Inheritance were united and knit to H. 8. and his Heirs.

This, says Sir Thomas, is the chief Hinge upon which this whole controversy turns, and upon which the greatest Stress of it lyes.

But he artfully leaves out the the word Successors, which by all that went before in former Reigns, and by the manifest intent of that Statute, was a necessary word: for if they thought no Man could be Lawfull Successor, who was not so by a Strict right of descent, what need of such Sollicitouines to have a Successour declared?

The rules of Succession in private Inheritances were certainly known, and invariable: but the Custom of the Kingdom for the Succession of the Crown, having left a Latitude of Election to the States of the Kingdom, while they kept to the Regnant Family; Men have endeavoured to Frame Schemes of descent to suit with such Variations. Sir Thomas, not minding his Assertion, that the Succession of the Crown descends the same way that other Inheritances do, by the Law of God, Nature and Nations, admits three differences; which shews the way, or course of descents is widely different.

1. In the case of Foreign Birth, already mentioned.

2. In case of Forfeiture or Proscription, the consequence of which he understands no better than other Points of our Law.

3. "A Third difference he finds; in the Succession of private Men, the Brother succeeds not the Brother, nor the Sister to her Brother or Sister, unless they are of whole Blood by the Fathers side, that is, unless the Brother and Sister be altogether of the *same Stock*, and related as well by the Father as by the Mother.

f. 247.

For if these Brothers be only of the same Blood by the Fathers side, that is, if they are Born of different Mothers, the Succession devolves first, by the *common Law of England*, to the Uncle, before it goes to the half Brother.

"But we see it is otherwise in the Succession of the Crown. For tho' the Brother or the Sister be only of the same Blood by the Father's side, and not the whole Blood, they notwithstanding succeed to their Brother.

"Thus before the Conquest, the Sons of King Edward which he had by several Wives, nay by *Concubines*, succeeded one to another, to wit Edmund succeeded *Athelstan*, and after Edmund his Brother *Edred*; to Edmund Ironside succeeded *Edward*, tho' begotten by their common Parent *Ethelfred* by another Wife, to wit, *Emma*, Daughter of *Richard Duke of Normandy*. And lately *Queen Mary*, succeeded *E. 6. Queen Elizabeth* Succeeded *Mary*; tho' we all know that they had different Mothers, to wit *Jane Seymour* the Mother of *Edward, Catharine* Daughter of *Ferdinand the Catholick King*, was *Mary's* Mother, and *Ann Bullen*, Queen *Elizabeth's*. Were

Were it not to be thought, that the *Nonjur-
ring Editors* wanted all Sense of Shame, or Com-
mon understanding, to publish such incoherent
Stuff, to justify their obstinate adhering to a
Conclusion contrary to their Premises.

They must Imagine, that if their *Prince* in
the Clouds, were Begot by any Body, during
the Coverture between the late *King James*
and his *Queen*; He had an indefeisible Right to
the Crown, by the law of *God, Nature and Na-
tions*. But their Oracle tells them, none of
these are to take place, any further then they
Agree with the law of the Land; according
to which; not only the Half-Blood may be
prefer'd to the whole, but even Bastard Issue,
to them who, by the Law of *God, Nature, and
Nations*, would have the right to a private
Inheritance.

Sr. Thomas agrees, the Succession of the half
Blood, and Illigitimate Issue, is by the Law
and custome of this Land, and 'tis Demonstrat-
ion, that this can be no otherwise, than as in such
cases, it warrants, National Settlements of the
Crown.

Thus after that Act. 25. *H. 8.* on which *Sr.
Thomas* supposes the Hinge of the Controversy to
(a) 2. 8. turn; by (a) Authority of Parliament, 28^o *H.
H. 8. c. 7.* 8. the Marriages with *Queen Catherine*, and
Queen Ann, are declared unlawful, and the
Children illegitimate; the Crown is settled
upon the Issue of the Body of *Queen Jane*
E. 6. th's Mother, for want of such Issue, to
such Person and Persons as the King should
appoint by virtue of the said Act: And it pro-

vides

vides, that if any should attempt to succeed contrary to that Settlement, they should lose and forfeit all Right Title and Interest, that they may claim to the Crown, as Heirs by Descent, or otherwise. The Reason for reserving an appointment to the King is very Remarkable; because, as the words of the Statute are, "if such Heirs should fail, as God defend, and no provision made in your life, who should Rule and Govern this Realm; for lack of such Heirs, then this Realm, after your transitory life, shall be destitute of a lawful Governour: or else per case incumbered with such a Person, that would covet to aspire to the same, whom the Subjects of this Realm shall not find in their heart to Love, Dread, and Obediently serve as their Sovereign Lord. The Estates of the Kingdom promise that they will adhere to and obey, the Person so nominated and appointed by the King, as their true and lawful Lord, as freely as if he were the Lawful Heir, And all offenders against that Act, their abettors, Maintainers, Tutors, Counsellors, and Aiders, were to be deemed and adjudged High Traitors to the Realm; according to which it is very Evident,

1. That no Person would have had Right to Succeed, who was not within the express limitations then made; or the future Provision by Virtue of the Authority of the Parliament.

2. If any Person should aspire to succeed from a pretence of Proximity, or the Settlement 1. H. 7. he would have been an Incumbencer, or Usurper of the Realm; unless the Subjects should find in their hearts or freely consent, to serve him as their Sovereign Lord; that is, till he should be Elected King.

3. That

3 That till the *Election* of another *King*, there would be a *vacancy*; and who ever would pretend to be *King*, till *Elected*, was punishable as a *Traitor to the Realm*.

Sir. T.C.f
136.

Sir *Thomas Craig*, argues with no more strength than usually he do's; when he says, "Now by these words a free power is not given to prejudice the *true heirs and Successors*; and further, a privilege conceiv'd in general Terms, ought always to be Construed according to Equity and Natural Reason; neither by Privileges which are granted Contrary to the Common-Law, is Liberty allow'd for Trustees to extend them how far soever they please.

If the Common-Law of *England*, had ascertain'd the Successor, there had been no need of the Act; and whatever Limitation the Constitution might put upon the trust which the States repos'd in *H. 8.* they manifestly were of Opinion that he might reasonably, set aside any Man who pretended to the right.

(b) 25.
H. 8.

4 () By Authority of the same Parliament, the *Illigitimations* of *Mary* and *Elizabeth* continued; yet if the *King*, and *Prince Edward* should Dye without Heirs of their Bodies, the Crown was to go to the *Ladies* Successively: But their Respective Interests, to Determine, if they did not perform such Conditions as the *King* should appoint. And in Case of Failure of Issue, or in performance of the Conditions, least the *Realm* should be *Destitute* of a *Lawful Governour*, the Crown was to go as the *King* should appoint, in such manner as is there Directed.

Then

The (a) Settlement by Authority of Parlia- (a) 35.
ment, 28. H. 8. was by the same Authority, con- H. 8.
firmed in Substance 35^o. with a repetition of
the Inducement to place in the King a Power to
appoint a Successor. But who ever should have
been so appointed, or for want of such appoint-
ment, Elected by the Estates upon a vacancy, ac-
cording to a Statute 25. H. 8. and that above
cited 1. H. 7. would have become a Natural
Lord.

That, what I have observed in Acts of Parli-
ament in the time of H. 8. proceeded, not from
the prevalence of any party, or Compliance with
the King's Humour, but was the settled Judg-
ment of the Learned of those times, how much
ever divided in other matters; may appear,
by some passages between the Learned Sir Tho-
mas Moore, who had been Chancellor, and Ryebe,
then Soliciter General.

Sir Thomas being a Prisoner in the Tower, for
not owning the King's Supremacy, Ryebe, to
perswade him to comply, used this Argument; (b) Inter
(b) If says he, it should be enacted, by Authority records de
of Parliament, that I should be King, and that Anno 27.
if any one should deny 'it, it should be Treason, H. 8. sub.
would you say what I were not King? For cer- Cust. ut-
tain, adds he, in my Conscience this would be no Capital
Offence, but you would be obliged to say and to Justie &
make me for King, because your own consent was Antornat.
mand by the Act of Parliament. Gen. si in
atlas suis-

Sir Thomas answers, it would be an Offence if per Autho-
riate Parl
si diceat non &c. Vid. etiam Bp. Burnet's Hist. of the Ref. 1. vol.
344.

he should say he were not King, because he should be bound by the Act; for that he might give his consent to that matter. This, he said, was a light cause.

But what if a Parliament should enact, that God, should be God. But says Riche because your case from God is Sublime, I will propose to you this of an inferior Nature: You know our King is constituted Supreme head on Earth of the Church of England; and why ought not you, Master Moore so to affirm, and take him, as well as in the Case above, of my being made King. In which Case you grant, that you would be Obligated to Affirm, and take

(a) Quia Rex per
parl. fieri
potest e. par
parl. depri.
vari potest. me to be King. Moore says, These were not like cases, because (a) King may be made by Parliament, and may be deprived by Parliament, to which Act, every Subject being present in Parliament, may give his consent. But to the case of the Primacy he cannot be obliged because to that he cannot give his consent in Parliament, &c.

'Tis observable, that tho' this is set forth in the Indictment against Sir Thomas Moore, it is only used as proof of denying the Supremacy; without any Aggravation from what he says of the Power of a Parliament in the present question.

- (b) 1543: E. 6. (b) succeeded H. 8. according to Parliamentary Settlements, without any formal Recognition. Nor was (c) Mary his half Sister who succeeded him, recognized; but her Parliament thought it for her honour to take off the Illegitimation, Tho' that was not necessary to give her a right to the Crown: Nor did the Parliament use any expressions whereby they might seem to think so.

Whe

When she came to Marry Philip King of Spain; they fully asserted their rightfull Power; all the Marriage Articles being Settled by (a) Authority of Parliament: By that Philip is made an English King. (b) Another Parliament makes it Forfeiture of Goods and Chattles, and Perpetual Imprisonment the first time, and High Treason the Second, after a former Conviction, Maliciously to maintain, that either of them ought not to enjoy the Stile, Honour and Kingly Name.

Her right was founded upon the express Li-
tation to her, by Authority of Parliament, and
her Husband's, not (c) in Marrying her, but the (c) 1558.
Consent of Parliament.

Upon the same right her half Sister Elizabeth
 succeeded her. By that Good Providence which
 often appear'd for her, Mary dying (d) while (d) Cam-
 Parliament was sitting, the States, with gene- den. Eliz.
 consent, decreed Elizabeth to be Proclaimed True f. 12.
 and Lawfull Heir to the Crown, according to the
 Act of Succession, 25. H. 8.

And in the Act of Recognition, she is declared,
(e) their Rightful and Lawfull Sovereign Ledge
dy and Queen. 1. Plc. 2.

Soon after this, in a letter written with her own hand (f) to *Ferdinand* the *Emperor*, she tells him (f) *Caml.* that she by God's goodness succeeded her Sister, by right of *Inheritance*, and consent of her Subjects.

Tho' she had sufficient opportunity to have procured an Act of *Parliament* to take off her *legitimacy*; she seemed with Wisdom to decline it.

1. Because the *Authority of Parliament*, under which she Claimed, was more generally acknowledged in those days, in Relation to the Succession of the Crown, than in voiding or confirming Marriages, which has been held a Spiritual matter

2. To admit, that she owed her Crown wholly to the *Authority of Parliament*, could not but be more Popular, than to pretend to it by right of Blood,

(a) Four. In (a) the 8th. and 9th. of her Reign, the Lords Adressed to her, that a Successor might be appointed in Parliament, least God should call the Queen, without certainty of Succession: and the Queen affirm'd, that the not granting their request would leave the Realm without Government.

(b) Stat. In the (b) 13th. of her Reign it is made 13. Eliz.c. Treason, during her life, and forfeiture of Goods and Chattles after her Death, to deny the Power of Parliament, to limit and bind the Crown, and the descent, Limitation, Inheritance, and Government thereof: And a penalty is set upon them who should affirm, that any but the Issue of the Queen's body, had right to Succeed after her.

For any one who expected the Crown, to pretend to it while she lived, is made Disabled during Life only: But by a (c) Subsequent Statute, aproveing and explaining the Voluntary Association of the Subjects that year, every such person is Excluded and Disabled for ever. The

(d) Camd. at (d) the time of giving Judgment against Eliz.

Mary Queen of Scots, if we may credit accounts after her Son was *K. of Eng.* it was declared to be without Prejudice to her Son; this could not hinder the operation of Law upon that Statute: And I would gladly know how he could have any Right, Prior to the Declaration in his first Parliament, since he had no pretence as a *Special Heir*, under any *Parliamentary Settlement* then in force.

Upon the Queen's Treaty of Marriage 14^o of her Reign, with the French King's Brother, she Declared (a) that She could not grant, without the assent of the States of the Realm, that he should be Crowned after the Marriage. (a) Camden f. 160. An 1571.

In (b) an Information in the Exchequer 21^o of her Reign, upon which Judgment was given, with the advice of the Judges of Both Benches, Lands are said, after the Death of E. 6. to have come to Queen Mary, as his Sister and Heir, as in Right of the Crown; and so from her to Queen Elizabeth. In both which instances, according to the Judgment of that time, the Rightfull possession of the Crown, made them Heirs to their respective Predecessors: Notwithstanding the half Blood of both, and the continuing Illegitimacy of one of them. (b) Cokes entries f. 373. 380.

That (c) J. 1. could not Rightfully Succeed that Glorious Queen without an Election of the States of the Kingdom, had been declared with sufficient Authority, in her time, and in the time of H. 8th. and, without such Declaration, would appear by the observing how the Law stood, and was taken in all former times. (c) An 1602.

But what ever right was ascribed to him after he got Possession; his party here found it requisite to set (d) up a Will or Nomination of Queen Elizabeth, to Facilitate his accession to the Throne. (d) Vid. Camd. Eli. & Wilson's Hist. of J.

Then with a new strain of Loyalty, Judges, Lawyers, and Juries, concur'd in making attempts to prevent his coming to the Crown, Treason; the like of which, with all its Circumstances, had not been known in any Age of this Monarchy.

Tho' there had been Treason against W. 1. before his actual admittance to the Crown, it was, as has appeared above, after a National Settlement upon him by name. This was the case of the unfortunate, Lady Jane, and others who set her up against Queen Mary. Yet that Compliment to J. 1. was but Suitable to the Flattering Act of Recognition 10. of his (e) Reign: According to the preamble of which, Immediately upon the Decease of Queen Elizabeth, the Crown did by Inherent Birthright, and Lawfull, and undoubted Succession descend and come to him; as Lineally descended from Margaret Daughter to H. 7.

However, that Parliament made no Law in the matter, and by good luck, left the Constitution as they found it: For they made no Settlement of the Crown, onely offered that Recognition as the first Fruits of their Faith to him, and his Royal Progeny and Posterity for ever. Which if it had been a Settlement, would amount to no more, than what had been usual in former times; for Parliaments to make a branch of the Royal Family, a new head of future Successions: But by this any one of the Issue, or Posterity, stood fair for an Election.

Yet, possibly, the Parliament had not been so forward with these Fruits of their Loyalty, but for his Speech to 'em wherein he says.

(a) Every

(a) Every King in a Settled Kingdom is bound ^{(a) vid.} to observe the ^{King} ~~passion~~ made to his people by ^{James his} his Laws, in framing his Government agree-^{works.} able thereto. And a King Governing in a settled Kingdom, leaves to be a King, and Degenerates into a Tyrant, as soon as he leaves off Governing according to his Laws. In which case the King's Conscience may speak to him, as the poor Widdow said to Philip of Macedon; either Govern according to your Law or be no King.

The Parliament take him at his word, and grafting upon it, says (a) his Majesty hath vouchsafed to express many ways, how far it is and ever (a) stat. shall be from his Royal and Sincere care, and Ef-^{I. F. I.} fecti-^{1. F. I.} on to his Subjects of England, to alter or in-
novate the Fundamental, and Ancient Laws, Privileges, and good customs, of this Kingdom. Whereby not only his legal Authority, but the Peoples Security of Lands, Livings and Priviledges, both in general, and particular, are preserved and maintained. And by the abolishing or altering of which, the it is Impossible, but that present confusion will fall upon the whole State and Frame of this Kingdom; where, in as Modest Terms as they could, they bid the King, at his peril, to violate the Fundamental Laws, on which his Regal Authority depended, as well as their rights and Priviledges.

That the Non-jurors may see what a powerful Advocate they have chosen in Sr. Thomas Craig, I must recommend to their Consideration what he says in the Cases of R. 2. and E. 2. whether he allows, that if they had broken the Contract between them and the People, any powers on Earth, might judge them; and if there be any judges, how they ought to proceed.

Sr. T. C.
of the Suc-
cession f.
329.

" I know, says he, it has been Disputed by some
" Learned Men, whether or not a Tyrant is to
" be judicially try'd, or at least to be cited,
" before lawful arms be taken against him. In
" Case a Tyrant has an Army, if he keeps all
" the Castles and other Strong Holds, with
" Garrisons, so that *He can do Mischief* to many,
" and *even the wisest of them*, and among the rest
" Solon, assert, that Arms may lawfully be taken
" against him, tho he be neither cited nor Condem-
" ned. But if he be ready and *willing to under-*
" *go a Tryal, and will Suffer himself to be judged*
" *according to the Laws of the Country*, they Act
" against the Laws of God and Nature, who
" take upon them to punish him *without Citation*
" *and uncondemned.*

" But this *Richard* was kept in a Publick Jail,
" Destitute of Arms, Men, and all Guards and
" Garrisons; and who, had he been allow'd a
" *fair and just Tryal*; could have made a good
" Defence for himself; and overthrown all the
" Calumnies of his Adversaries, or retorted them
" upon themselves.

" The same thing may be say'd of, the De-
" position of E. 2. who was Crush'd meerly
" by the envy of the Peers, because his expe-
" dition against the Scots was so very unsuccessful
" being guilty of *no Crime*, that is to be found
" upon Record, or of any Oppression of the
" Subjects.

Not hereto enquire, into the Grounds of the re-
spective Judgments nor to Enquire how an unsuc-
cessful Expedition should raise *envy*; can Sr. Tho-
mas's Admirers say, that any thing required by him
was

was wanting, to authorize the judgment of the States of this Realm, upon King James's abdication? Or can they henceforward have any advantage of the matters, they would have thought worthy of Observation, upon Sr. Thomas's Declaming against Episcopacy?

Here, say they, it is worthy of Observation, f. 358.
 "that the Doctrines taught, the Principle laid *In Mar*
 "down and pursued, and the truths asserted
 "in this Treatise, are not the work of some
 "Tory; some *High-flying Churchmen*, but of
 "one whose *byass* seems to have been another-
 "way.

Indeed it is apparent enough, that, whatever he may say in Fits of *Loyalty*, in his *lucid Intervals*, when he returns to himself, his Principle, is as much against the suppos'd Rights of Monarchy, for which he is produced, as his more Learned and Judicious Countryman *Buchanan*.

'Tis certain Sr. Thomas has overthrow'n the *Non-juring* cause, by allowing a Judgment to the States, in the case of *Baliol*, whom he will have rightfully Disown'd; and that if R. 2. and E. 2. had been guilty of all which had been alledged against them, and formally cited, the judgments against them would have been valid.

In truth the methods which he uses to maintain an Argument, contrary to his *Byass*, are so absurd, that his secret aim might seem to be, to wean Men from such Follies of *Bigottry*.

The

C H A P. XLI:

The nature of the Scotch Succession to their Crown, of their Traditions and Historians; and Demonstration upon several accounts, that the Divine right there, has followed, and not led or Govern'd the Civil.

The notions propagated from the Authorities of *Sr. Thomas Craig*, and *Sr. George Machenzy*, and countenanc'd by a Scotch Act of Parliament, render the Consideration of their Regal Succession, and the pretended rule for it, material, I cannot say necessary, because one would wonder how such absurdities should ever become, as it were, National, and much more how these Spurious Reliques, should still be carry'd about in solemn procession, after both Nations, have with the greatest Solemnities, and

(a) *Sr. G. Machenzy* and *Dr. Hicks*(a) have printed, with great applause, an Act of Parliament, passed in Scotland, which reciting,

M's. That the lawful Successor cannot be debarred. "That the Kings of that Realm, deriving
An. 1684. "their Royal power from God Almighty alone,
 (p. 142. "do lineally Succeed thereto according to the
 (b) *Fovian* "known Degrees of proximity in Blood, which
 "cannot be interrupted, Suspended or Diverted
 "by any Act or Statute whatsoever, and that
 "none can attempt to alter or divert the said
 "Succession, without Involving the Subjects of that
 "Kingdom, in perjury &c.

"Recognizes, acknowledges, and declares, the
 "right to the Imperial Crown of that Realm,
 "to be, by the inherent right, and the nature of
 "Monarchy, as well as by the Fundamental and

"unaltera-

"unalterable Laws of that Realm, transmitted
 "and devolv'd, by a lineal Succession, according
 "to proximity of Blood.

"That upon the Death of the King or Queen
 "who actually reigns, the Subjects of that King-
 "dom are bound by law, duty and allegiance,
 "to obey the next immediate and lawful Heir,
 "either Male or Female, upon whom the right
 "and administration of the Government is imme-
 "diately devolv'd.

"And that no Difference in Religion, nor no
 "Law, nor Act of Parliament made or to be
 "made, can alter or divert the right of Succes-
 "sion, and lineal descent of the Crown, to the
 "nearest and lawful Heirs, according to the
 "degrees aforesaid. Nor can stop, or hinder them,
 "in the full, free, and actual Administration
 "of the Government, according to the Laws of
 "the Kingdom.

That of the Administration is so qualified, by
 adding the Laws of the Kingdom, to this Divine
 unalterable right, that the Scots, if we may credit
 their own writers about their Constitution, as
 Cicero said of the Epicurean notion of the Deity,
 do, *nomine ponere re tollere*, allow it in Name;
 in reality take it away.

But Sr. George Mackenzie or other Penman
 of that Act, did not herein consult their O-
 racle Sr. Thomas Craig, who is positive, that a
 Mohametan or Madman, may, be debarr'd from the
 Administration.

However with Sir Thomas and the contrivers
 of that Statue, the Succession, according to the
 Degrees aforesaid, is sacred and unalterable, and
 yet this Rule will want some infallible interpreter,
 to be a sure guide to Men's Consciences.

It

1. It seems only to Regard the use it was then to serve, which was to deter People from attempting to exclude the then Duke of York who stood next to King Charles the 2d. whose title was undisputed; and therefore places the Right in standing next to the King or Queen, who actually Reigns: But this is very wide from Sr. George regbr of Machenzi's sacred rule, of always attending to Monarchy the next of the Family or who represents it.

p. 24.

2. Notwithstanding the plain intention of applying their rule to the succession of Brothers, as if such very learned Men were infatuated, when they would make Religion a Stalking Horse, to drive Men into the party of a Popish Successor, they left their rule as uncertain as they found it: for when their business was to take in Collateral as well as Lineal Succession, they either seem'd not to understand the most obvious difference, or loss'd it in a blind zeal.

The Degrees aforesaid, relate only to a lineal succession by proximity of Blood.

But they never thought of a Succession in the same Degree, which is not lineal but collateral, and where the proximity is the same.

Inleron
S. 8. 5.

'Tis evident that in Collaterals, proximity, cannot be the standing rule: because in the instance of Brothers all are equally near one another: But the eldest, is to be prefer'd as the most Worthy of the blood, and the younger Uncle, without a right of Representation, which differs from the rule lay'd down in the Act, is nearer in blood then the Son of the Elder.

3. Tho' the Scotch Parliament go a note beyond Sr. Thomas Craig, upon the point of Administration, they seem to Transcribe his Errors about

about the rule of descent, or think it peculiar to appear better to understand it.

'Tis certain so little did Sr. Thomas understand the Law of England, the chief Feudal Law worth his Enquiry, as, upon Doleman's urging an express Agreement between Robert Eldest Son of W. 1. and Rufus, by which Robert should have succeeded next after the Death of Rufus; to say, Of Succession f. 362.

"I answer, that the publick right is not to be altered by such private Agreements, neither ought the rightful Succession in Kingdoms to be overturn'd by such pacts or Agreements: Rufus being Dead Henry Succeeded to him, because by Law an inheritance Descends, but do's not Ascend.

Spectatum admissi risum teneatis amici?

What could not Rufus Succeed his middle brother, because of the maxim against the Ascend of the Inheritance?

But this 'tis, with profound skill in the Feudal Law, not to understand, that there's no Ascend between Brothers, they standing in the Inst. f. same degree: Nor that only Ascension in the 11. a. right line, is prohibited, but not in the Collateral.

Sr. George Machenzy and others, who would Establish a Divine-Law, about Degrees in Blood, which as appears, their Act of Parliament left as instable as it was before; seem no great Politicians in putting themselves under a necessity of hollowing all their fables, about a continued series of Successions for above 300 years before our Saviour.

In the 13th. of E. 2, the People of Scotland assured the Pope, that in that part which they possessed in Britain, at the time of their owning the Dictates, of some pretended Antiquaries,

113 Kings of their own Royal Family had Reign'd, without one *Foreigner* intervening.

This was a sufficient stretch for that time : But they never thought of adding, that all these Succeeded by a *Divine unalterable right of Proximity* ; it was enough for their purpose, if they could prevail on the *Pope*, to but seem to think that so many Kings of their own Royal Family, had reigned in this *Island*, and to Curse them who would not believe it : I suppose they took into their account the 3. Kings, who reigned together as *Roytelets* under our King *Cnut* : but from which of the 3. they devive the unalterable Succession, or why more from one than from another, I may leave to the determination of *Dr. Hicks*, and other learned *Non-jurors*, I hope I may, without imputation of the Crime of *lese Majesty*, except against the *infallible Tradition*, 130. E. 2. since *Sr. George Machenzy* Encounters it with a quite different *Infallible Tradition*, in the bead-roll of Kings repeated at *Coronations*, for by that time *Sr. George* had committed this to writing, they had quite loss'd about *Sr. G. M's* 18. of their *Kings* : Which any Man may observe by comparing *Sr. George's* list, from the visionary recital of a Second sighted *Highlander*, with the Traditional Number in the 13th. of E. 2.

Vld. the Genealogy in this to writing, they had quite loss'd about Sr. G. M's 18. of their Kings : Which any Man may observe by comparing Sr. George's list, from the visionary recital of a Second sighted Highlander, with the Traditional Number in the 13th. of E. 2.

Since the time of E. 2. new sprung Tradition has invented a law of King *Kenneth* the 3d, (a) *Right* that upon the Kings Death, the next Heir of (a) whatsoever Age, should Succeed; by Vertue of which 'tis held, that the *Scotch Nation* swore
147.

(b) to own allways the immediate Heir.

(b) *ib. p.* This *Kenneth* was the Son of *Alpin*, who as
196. I shew'd before, was the first *Scotch King*, that they

they can Reasonably pretend to have settled in Britain.

Concerning his Laws, I desire the Bishop of Carlisle may be heard, who is as favourable as possible to their inventions.

(a) Of Mac. Alpin's Laws, I shall not repeat (a) Scotch
 "the Reflections made upon them, by a late Hist. lib.
 "Learned Prelate of our English Church, but thus P. 254.
 "much the most judicious Civilians of Scotland,
 "have allow'd me to say; tho *Hector Boethius*,
 "and others, be exact in Registring them, 'tis
 "certain their whole authority is founded on
 "Oral Tradition, if not a more Treacherous
 "bottom; Since before the days of *Malcolm*
 "Canmore, who was contemporary with *William*
 "the Conqueror, the Scots had no sort of written-
 "law.

Sr. George Macbenzy agrees that from Ken- Right of
 neth the 3d. to King Charles the 2d. inclusive the Success-
 of 31. Kings, they have had 5. who came to sion de-
 to the Crown against that supposed Law of sended p.
Kenneth, viz. Constantine the Bald, Grimus, 208 209.
Mackbeth, Donal Bain, and Duncan the Second:
 but whereas the Successions of their Kings, have
 been pretended to be exactly preserved, by sa-
 cred Oral Tradition, Sr. George, with all his skill,
 is forced to quit the Tradition, as to the Successions
 and to keep to it only for preserving the Sacred
 descent.

And yet if Tradition fail here; whence had
 their Historians the number of their Kings?

Bishop Stillingfleet, having observ'd that the Antiquity
 Traditional Genealogy omits Four of their Kings, of the Roy-
 betwixt *Malcolin Canmore*, and *St. David*, Sr. at life far-
 George says t'was very justly for *Donald* ther clear'd
 the 2d. was *Malcolins* brother, and *Duncan* his P. 123.
 Bastard

Bastard, Brother, none of whom had right to Reign: and tho' Malcolm had two Elder Sons Edgar, and Alexander the 1st. who reign'd successively, yet they having no Children of their own, the Succession did devolve upon David the youngest Son. The Lord Tarbat, giving the descent of King Charles the 2^d. leaves out Malcolm the 4th. William 2. Alexander 3. &c. and thus each makes the Tradition, vary with his Hypothesis: But the wisest lessen the number of Kings, that the fewer variations from the supposed rule of Proximity may appear.

P. 124. Sr. G. Acknowledges, Bishop Stillingfleet has discovered an Error which he thinks of the writer or in the *Highland Genealogists Memory or Expressions*, who inserts none betwixt Malcolm the 2^d. and Kenneth the Son of Alpin, whereas the Historians insert 13.

Since Sr. George here corrects the tradition by the Historians, or else gives up 13 of their Kings at once, whence had the Historians their light? Tradition must no longer be pretended to countenance them. I need not here compare their most receiv'd Historians, with the *Scotch Chronicle of Mailros*, which begins with as early an account of their Kings as could with any colour; and yet we find not there any one who had so much as the Name of a King of the Scots, before Eugene or Edward who dyed in the year 741. from that time the Disposseing and Murders, of several of their Kings are mention'd, but nothing of any rule of descent, except that notice is taken when a Son or Brother succeeded.

But the relation which one King stood in to another, must generally have been supplied by the imaginations of Men; since we

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since the 13th of E 2. when 'twas thought enough to be of the *Scotch* Royal Family.

And if I be not much mistaken, they who are most Zealous for a strict Right of Descent in the *Scotch* Line, must take up with the *English* Constitution in this matter, as they have in other particulars; or must own that their *Bruce*, and all his Descendents, were Usurpers, and consequently that the *Fee* of the Kingdom of *Scotland*, has been consolidated to the Crown of *England*, ever since the Reign of *Edward Baliol*.

Yet I shall shew, that they have had *Legal* and *Rightful Kings* longer; tho' upon grounds which they may not be willing to allow of.

I must own that I cannot produce such Authentick Evidences of the Right of *their Kings*, as I have done for the *English Monarchs*: The *Scots* having no Records of the times; and if we believe the greatest Supporters of their *Fables*, all their *Historians* conspire together in advancing the power of the People.

The *Bishop of Carlisle*, says of *John Major*, 'In the Case of *Baliol* and *Bruce*, he maintains the Power of the People, and gives great allowances afterwards to the *Parliament*, in disposal of the Crown.

Yet *Bishop Lesly*, says of that *Historian*, 'he was every where more studious of Truth, than of Eloquence.

Our *Bishop* says of *Hector Boethius*, 'His Principles in Polity, are not better than those of *Buchanan*, whose *Jus Regni*, is effectually confirm'd, by what he Relates of the making and deposing of *Kings* and *Bishops*, by the sole creating power of the People.

Scotch
Hist. 16.
p. 103.
He writ
4. 1518.
5 J. c. 5.
16. p. 104.

p. 111.

Bishop Lesly's first 7 Books, he says, are ' an Ab-
' stract of *Boethius*, whose very words are fre-
' quently retain'd.

Defence of Of *Bishop Lesly*, Sir George Macbenzy says, he,
the Anti- and Archbishop Spotswood, are Men ' who have
quity. p. 40. ' written their History with great Judgment
' and Truth, and it cannot be imagin'd that
' they, who were banish'd for Loyalty, and
' suffer'd the loss of all, for their perswasion,
' would have asserted a whole bundle of Lyes,
' or a continued Romance.

Nay, *Lesly* in his Preface to the Nobility, says,
p. 41. his History had been drawn with all the exactness,
that the Truth of History requires, from the ancient
Records of the Kingdom, and the Monastries.

Which is Demoftration, that if any thing in
Lesly contradicts Sir George Macbenzy's Notion
of a Divine Right, subject to no Humane Law;
his Admirers must be contented with such a
Right as goes along with the Civil.

Who would think that the Bishop of Carlisle
should give this attestation to Buchanan?

p. 144. ' He is not to be reputed the first Parent and
' Founder of antimonarchical Principles in Scotland,
' since it can only be said of him that he receiv'd
' and improv'd the imperfect Notions of popular
' Government, which had before been started by
' Hector Boethius, and others, in their History of
' Fergus and his Successors.

Upon the Father of their Historians, For-
don, or his Continuator, we yet meet with
no Censure in this Matter, and if I occasion any
by citing them, or either of them, 'twill be no
fault of mine.

If Verses writ in some of the MSS. of For-
don, are true, he writ but Five Books of Sixteen,
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but yet his *MSS.* with the Continuation, has obtain'd the Name of the *Scotch Chronicle*, and as the Bishop of *Carlisle* observes, the black Book of *Pesly*; and all the pompous shew of *Registers* of their History, are but Transcripts of *Fordon* and his *Continuator*.

So far at least as *Sir G. Macbenzy* and the *Lord Tarbot*, use the whole *Scotochronicon* as *Fordon's*, it may be allowable for me; for such parts as they cite with his Authority, may be well us'd against them.

Before producing which, I shall shew that even the Oracle of the present *Non-jurors*, *Sir Thomas Craig* has, upon *Non juring Principles*, condemn'd the whole Race of the *Bruces* and *Stewards*, as *Usurpers*, who Succeeded contrary to the Laws of *God, Nature, and Nations*.

But as I have the highest Veneration for that Stock, to which we owe the Blessing of Her Majesty's *Reign*, I shall shew a Right of it to be *Divine*, upon a Foundation not to be shaken. As has appear'd from matter of Record cited above, our *King Edward* the 1st. in a *Parliament* of both Kingdoms, upon the Competition between *Baliol, Bruce*, and others, adjudg'd the Right to be in *Baliol*, according to the known Law of both Kingdoms; this was because *Baliol* had the Title of the elder Sister, and therefore, the Kingdom not being partible, he ought to have the whole.

Of this *Sir Thomas Craig* says, 'The dispute f: 3 15. was between the Descendants of two Sisters, of which *Bruce* only as being first Male, pretended to have the preference in the Succession; and in those days the *Prerogative* of the Male was not inconsiderable.

K k 2

Here

Here Sir *Thomas* agrees, that *Bruce's* only pre-
tence was as *first Male*, and admits that he came
from the younger Sister.

But upon a Question concerning Descen-
dants from Daughters of *John of Ghent*, he is
positive.

f. 374.

' There can be no room for the Children of
' the second Daughter, in such things as admit
' of no Division, or cannot be shar'd, as long as
' there are Children from the eldest Daugh-
' ter.

f. 290,
291.

Before this, speaking of the Right of the
Scotch Line, as Descended from *Margaret H. 71st*.
eldest Daughter, he had said,

' They who deny to the Off spring of *Ma-*
' *garet*, the Right of Succession to the Kingdom
' of *England*, have not only the Law of *God*,
' *Nature*, and of *Nations*, against them, and the
' *Civil Law*, but also the mature Judgment,
' and Determination of their own Kings.

Thus in his sense, *Bruce* Succeeded contrary
to the Laws of *God*, *Nature*, and *Nations*, and
the *Civil Law* of the *Romans*.

I agree that *Bruce* had the Crown contrary
to Law, not having had *Investiture* from the
Imperial Crown of *England*: yet I will shew a
good Title for the *Stewards*.

But that it may be seen what a Leaden Rule
Sir *Thomas Craig* makes the Law of *God*, *Nature*,
and *Nations*, which he is positive gives the
Right of Crowns to the eldest Sister and her
Descendants, I shall Transcribe part of his Book
of *Homage*, where he advances the Right of
Bruce above that of *Baliol*, Grandson to the eldest
Sister.

There

There Sir Thomas has this memorable passage. Of Ho-
mage. p.
363.

But the *English* will say, that *Edward* pronounc'd a very just Sentence, in adjudging the Succession of the Crown of *Scotland* to *Margaret*, eldest Daughter to *David Earl of Huntington*, and her Off-spring, and rejecting *Isabel* the second Daughter, who Married *Robert Bruce* Earl of *Carric*, and her Off-spring; for there's no body who does not prefer the first Born to the second in individual Fees, and by consequence, the Off-spring of the first to the Off-spring of the second. Altho' indeed, most Men think, that this Sentence of King *Edward's*, was according to Law; yet because of his being corrupted, and receiving a Reward for his Sentence, he ought not to have been Judge.

This Objection against the Judicature, could be none against the suppos'd *Divine Right* of Succession; and yet the pretended Corruption, was only a promise to perform the *Homage* before due; and the Judge was the Person, whom God, and the Law, had made to be Judge, with the Assistance of his *Barons*, he being the *Sovereign Lord* of the Fee.

But, says he, if the Matter be thoroughly canvass'd, perhaps it will be found, that this Sentence, was not pronounc'd according to Equity.

Here he is more modest than ordinary, qualifying his assertion with *perhaps*: But this he would carry further from the pretended Custom of the Kingdom of *Scotland*, which is an averment contrary, not only to the Record of the Judgment, declaring it to be according

to the *Customs* of both *Kingdoms*; but to those *Authorities* which shew that the *Law of England*, govern'd all the *Customs* of *Scotland* in the *Descent* of the *Crown*.

'Tis to as little purpose, that he mentions a *Case* determin'd in *France*, and the diversity of *Opinions* among *Learn'd Feudists*.

After citing a *Text* to his purpose, (from what *Book* of the *feudal Law*, he is silent.) His *State* of the *Question* and *Resolution* is as follows.

P. 364.

, That we may adapt this *Text* to our *Hypothesis*.

' *David* *Earl* of *Huntington* and *Chester*, to whom as next of the *Paternal Line*, the *Right* to the *Kingdom* of *Scotland*, (the whole *Offspring* of his *Brother William*, being extinguisht) and it's *Succession* devolv'd, of which *Succession* a *Woman*, and those who *Descend* from her, are as capable as a *Male*. He left two *Daughters*, *Margaret*, the eldest who Married *Alan* *Earl* of *Galloway*, of which *Marriage*, was Born *Dornagilla* Mother to *John Baliol*, afterwards *King*: The other was *Isabella* Married to *Robert* *Earl* of *Carrie*; of which *Marriage* was Born *Robert Bruce*, Father to *King Robert* the 1st.

' The *Question* is, whether *Robert Bruce*, tho' Born of the second *Daughter*, yet the first *Male*, or *Dornagilla*, *Grandchild* by the first Born *Daughter*, is to be preferr'd in the *Succession* to the *Crown*, which admits of no *Division*. In this *Question* the two great *Lights* of the *feudal Law*, *Gerard*, and *Obert* are oppos'd to one another.

To pass by his small mistake, as if *David* were *E. of Chester*, He agrees the *Text* does not express whether

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Baliol,

whether the Son of whom the Question was, *p. 366.* were born of the Eldest, or Second Daughter, but says, there had been no place for Doubting if this Son had been Born of the Eldest.

'Tis more plain, that if what Sir *Tho.* represents as *Text* of the *Feudal Law*, had been so, there had been no possibility of a Dispute between the two great *Lights*, whether the *Text* were thus or no.

And if 'twere thus, it goes no farther than that *ceteris paribus*, if there be no other difference, the *Male* is to be preferred before the *Female*.

But if the *Text*, or Opinion of the best *Commentators* upon the *Feudal Law*, had imply'd, that a *Male* by a younger Sister is to be preferred before a *Female* by the elder,

1. 'Tis more plain by the *Feudal Law*, that in Matters Disputable, the Determination of the *Lord* of the *Fee* in his *Supreme Court* is, and ought to be, conclusive to all Parties.

2. The Rule of Judgment ought be the Law, *Vid. Sup.* which he obtains in his *Court*: and consequently, 'tis to no purpose to urge any Law but that of *England*.

3. As appears by *Glanvil*, according to the *Feudal Law* received in *England*, *Baliol* by doing *Homage* made his Right indisputable.

4. If *E. I.* had given Judgment in Favour of *Bruce*, according to Sir *Thomas Craig* himself, it would have been contrary to the Law of *God*, *Nature*, and *Nations*; and without taking Advantage of his concession, it would have been contrary to the Law of *God*, being contrary to the Law of *England*, by which he had appointed the Judgment to be. However, for a while, we may consider the *Bruce's* as Possessed of the *Crown* of *Scotland* after *John* and *Edward Baliol*, the Father and Son.

Lord Tar-
bot. Vin-
dication.

Sir G. M.
and L.T.

Fordon Lib
12 cap. 24.

At trac-
sand. Super
Statuta
Regni Sco-
tia.

Lib 14.
c 36.
A 1170
Rege Cre-
ando jura

Robert, the first Son of Robert, Son to Robert Bruce, who was Competitor with John Baliol, had Issue, Margery (who Married Walter Stewart of Scotland, never King) and David, afterwards King.

Before David was Born, as the Circumstances shew, according to Fordon or his Continuator,

" The Bishops, Abbots, Priors, Arch-Deacons,
" and Deacons, and the rest of the Prelates of
" Churches, the Earls, Barons, Knights, and the
" rest of the Community of the Kingdom, Met
" to Treat about the State of the Kingdom of
" Scotland, Ordained as follows, with the As-
" sent of Robert, and Margery his Daughter,
" and Heir Apparent; That if the King Robert
" died without Heir-Male of his Body begotten,
" Edward de Bruce his Brother should Succeed in
" the Kingdom. If Edward should die with-
" out Heir-Male, then the said Margery should
" Succeed in the Kingdom, or other the King's
" Daughters, if they Married with the Consent
" of the King, and Kingdom.

Here was no Regard to any supposed unalterable Rule of Descent; for,

1. The Male more Remote was preferred to the Female next in Blood.

2. There was a great Restriction upon the Right of the Females, it being disallowed, if they Married without Consent of the King, and Kingdom.

David being Born afterwards, Succeeded according to this Act of Settlement. Still to follow the Scotch Chronicle.

" After the Death of David, the three States
" of the Kingdom began to Treat in the Town
" of Linlithgow, about Creating a new King.

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" Dom.

" Whose agreeing Vote was to prefer Robert *statum su-*
 " Stewart, King David's Nephew, according *um heredi-*
 " to his *hereditary State*, or, as he stood in the *tarium &*
 " inheritance, and the *intent* of Entails first *intentum*
 " made hereupon. But Lord William de Douglas *calliorum,*
 " Earl of Douglas, opposed this Resolution, *&c.*
 " supported with a Military Force, alledging,
 " that it belonged to him, on the part of the
 " Cominses, or Baliols, to be rais'd to the Re-
 " gal Throne: whom George of Dunbar, Earl of
 " March, and John his Brother, Earl of Murrey,
 " and also the Noble Knight, Robert de Erskin,
 " openly resisted in this Claim. And the said
 " Douglas, considering that he could not resist 'em,
 " by the Counsel of the Prelates and Peers of
 " the Kingdom, made a *cession* from his unad- *Cessit sua*
 " vised *Presumption*, where, nevertheless, as a *inconsulta*
 " good Expedient it was agreed, that James de *presump-*
 " Douglas, his Eldest Son and Heir, should *tioni.*
 " Marry the Daughter of Lord Robert, the Fu- *Filiam Duc.*
 " ture King, Lawfully Begotten. And the said *Rob. Regis*
 " Earl of Douglas, together with his Son, should *Futuri de*
 " humbly submit to the King, and obey him. *legitimo*
 " And in the following Feast of the Annun- *thoro pro-*
 " tiation of the Blessed Mary, Robert Stewart *creantam.*
 " was Crowned at Scone with due Solemnity.

The Substance of what the *Scotochronicon* af-
 firmed of this Matter, is undeniably confirmed
 by an Act of Parliament made at the time, and
 given at large, and given by the Lord Tarbart,
 which follows in these words.

In nomine Sanctæ &
individue Trin. Patris
Fili & Spiritus Sancti,
Amen. An. ab incarn.
Dom. 1371. Secundum
mc-

In the Name of the *Lord Tar-*
 Blessed and undivided *bar's Vin-*
 Trinity, the Father, *Rob. the*
 Son, and Holy Ghost, *3 d. p. 9.*
 On the 27th. day of the
 Month

*morem & computationem
Eccles. Scoticanae mensis
Martii die vicefimo sep-
timo, serenissimus Prin-
ceps Dom. Rob. Rex
Scotor. Illustris. Apud
Seonam tempore suae Coro-
nationis existens, assisten-
tibus sibi Prael. Com. Bar.
ac ceteris de Clero &
populo Regni sui, post
Sacra Unctionis & Coro-
nationis suae peracta So-
lemniter, factaque decla-
ratione iuris, quo idem
serenissimus Princeps suc-
cessit, & succedere debuit,
Domino Davidi Regi
Scotiae avunculo & praede-
cessori suo, tam proximi-
tate sanguinis, quam
ex quadam declaratione
per quadam instrumenta,
confecta tempore inclitae
Memoriae Domini Ro-
berti Regis Scotiae, avi
& praedecessoris ipsius
Domini nostri Regis, ibi-
dem exhibita, atque lecta.
Nec non receptis Homa-*

gii

Month of March, ac-
cording to the Custom
and Computation of
the Church of Scotland.
The most Serene Prince
Robert, the Illustrious
King of the Scots, be-
ing at Seone at the time
of his Coronation,
the Bishops, Earls, Ba-
rons, and others of the
Clergy and People of the
Kingdom assisting him,
after the Sacred Solemn-
ties of his Anointing
and Coronation were
over, and a Declarati-
on being made of the
Right by which the
most Serene Prince
Succeeded, and ought
to Succeed to Lord Da-
vid, King of Scotland,
his Uncle and Prede-
cessor, as well by prox-
imity of Blood, as from
a certain Declaration
by certain Instruments,
made in the time of
Lord Robert of Re-
nown'd Memory, King
of Scotland, Grand-
father and Predecessor
of our Lord the King,
there exhibited and
read. And also the u-
sual

gii &
juram
Com.
Clero
exist.
gum
praest
bitis,
emph
insiden
berti
re &
& ver
um de
de ipso
abunda
assensu
Proc.
chris,
cognovi
voluit,
contiger
divina
grate, D
fil. su
Comes
noscant
& esse
legitimu
sibi post
Regno
disponen
succedere

gii & Fidelitatis solitis
juramentis, ab ipsis Prel.
Com. Bar. & aliis de
Gloria & Populo, ibidem
exist. in Coronatione Re-
gum Scotie ab olim
prestare consuetis & de-
bitis, volens more & ex-
emplo celeberrime Memorie
ipsius boni Regis Ro-
berti avi sui, coram cle-
ricis & populo Successorem
& verum heredem su-
um declarare ibidem, licet
de ipso clare constiterit, ex
abundanti, & unanimi
assensu dictor. Prel. Com.
Proc. & Mag. indi-
cavit, asseruit, &c. re-
cognovit, declaravit, &
voluit, quod cum ipsum
contigerit pro dispositione
divina ab hac luce mi-
grare, Dominus Joannes
fil. suus primogenitus,
Comes de Carric. & se-
nescallus Scotie, erit,
& esse debet, verus &
legitimus haeres suus, ac
sibi post mortem suam in
Regno Scotie, Domino
disponente, succedet, &
succedere debet, super
solum

fual Oaths of Homage
and Fidelity, which
from of Old, used and
ought to be received
at the Coronation of
the King of Scotland,
the Earls, Barons, and
others of the Clergy
and People there: wil-
ling, after the Manner
and Example of the
said good King Robert
his Grandfather of Fa-
mous Memory, though
more than needful, to
declare his Successor &
true Heir, tho the same
did clearly appear.
And by the unanimous
Consent, and Assent, of
the Bishops, Earls, Ba-
rons, and Great Men,
made known, Assert-
ed and Acknowledged,
Declared and Willed,
that when it should
happen that he should
depart this Life, Lord
John, his first Begot-
ten Son, Earl of Car-
rick, and Steward of
Scotland, shall be, and
ought to be, his true
and Lawful Heir; and
God so disposing, shall
and ought to Succeed
him

Ex abun-
danti.
Note Lord
Tarbat
weakens
the Sense
of this, ma-
king it a-
bundantly
known by
the Con-
sent, &c.

solium Regni sui. Quā Declaratione sic facta per ipsum Dominum nostrum Regem de præfato primogenito & hærede, ex abundanti, ut supra, unusquisque Præl. Proc. Mag. & al. ib. existentium, voce propriâ singulatim pro se, hæredibus & successoribus suis, asseruit, affirmavit, declaravit & voluit, quod idem Dom. Joh. post mortem præfati patris sui superstes & vivus sit, divinâ favente Gratia, futurus Rex Scotiæ, tanquam hæres legitimus ejusdem patris. Promittens quilibet bona fide, & manu in signum fidei dationis levatâ, quod eum pro Rege & hærede legitimo ejusdem patris sui habiturus

him in the Kingdom of Scotland upon the Throne of this Kingdom. Which declaration being so made by the said Lord our King concerning his foresaid, First Begotten Son and Heir of abundance, or, though more than needful as aforesaid. Every one of the Prelates, Earls, Peers, Gentlemen, and others there present, one by one with his own Voice, for himself, his Heirs and Successors, asserted, affirmed, acknowledged, declared and willed, that the said Lord John, after the Death his foresaid Father, surviving and living, should by the Grace of God be King of Scotland as Lawful Heir of his said Father. Promising each of them Bona Fide, and with his Hand lift up in sign of plighting his Faith, that he will hold him for King and Lawful Heir of his said Father

*habit
vabit,
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les, nec
scripto
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dens, in
sensu
prædicti
hoc fuer
bus re
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Domini
missis e
minus
virum
de Pee
tor. Can
sum,
publicu
bundan
fatum
sum
sum bo
& esse
Et post
ni Sco
Regem
qualiter
Proc. e
affirma*

habiturus erit, ipsum ju-
 vabit, atque defendet,
 contra quoscunque morta-
 les, nec non sigillum suum
 scripto seu juramento
 super hoc fiendo appen-
 dens, in signum suor. con-
 sensus & promissionis
 prædictor. cum ipsi super.
 hoc fuerint requisiti. Qui-
 bus recog. promiss. &
 fidei datione, in consilio
 Domini Regis sic præ-
 missis & actis, idem Do-
 minus Rex per venerab.
 virum Magistrum Jo.
 de Peebles Doctor. decre-
 tor. Canon. Glasguen. Cler.
 suum, proponi fecit in
 publicum, qualiter ex a-
 bundanti, declaravit præ-
 fatum Dom. Johan. fil.
 suum primog. verum
 suum heredem nunc esse,
 & esse debere de jure.
 Et post mortem suam, Reg-
 ni Scotiæ, volente Deo,
 Regem futurum: Et
 qualiter præfati Com.
 Proc. & alii de consilio
 affirmarunt, cognoverunt,
 consen-

Father, and will As-
 sist and Defend him
 against all Mortals
 whatever; and also
 Affixing his Seal to
 the Writing or Oath
 to be made hereupon,
 in sign of his Consent
 and promise aforesaid,
 being so required.
 Which acknowlegment
 promise, and pligh-
 ting of Faith, being so
 premised and prepa-
 red in the Council of our
 Lord the King, our
 said Lord the King by
 the Reverend Mr. John
 de Peebles, Doctor of
 the Decrees, Canon of
 Glasgow his Clerk, cau-
 sed it to be proposed
 in publick, how of a-
 bundance, he had made
 known and declared,
 the said Lord John,
 his First Begotten Son,
 now to be his true
 Heir, and that he
 ought to be. And that
 after his Death, God
 willing, he shall be
 King. And how the
 said Earls, Peers, and
 others of the Council,
 Affirmed, Acknowled-
 ged,

The Lord
 Tarbot
 Translates
 it as if all
 this was
 done in
 Council;
 who only
 prepared
 it, as Eds.
 of the Ar-
 ticles. He
 calls him
 Clerk of
 the Re-
 cords of
 the Dioces
 of Glasgom.
 It ren-
 der'd to
 consent
 and Re-
 cord.

consenserunt, & fide media ut præmittitur promiserunt: Et quod populum cum Clero Convocari facerat, ut in eor. præsentia & de eor. consensu unanimit, fieret & publicaretur, Nec aliquis super hoc ignorantiam pretendere posset aliquatiter in futurum. *Tota autem multitudo Præl. Com. Bar. & al. tam Cleri quam populi, unanimi voluntate, & clamore consono, nullo penitus reclamante, affirmaverunt, ipsum Dom. Johan. tanquam primogenitum & hæred. Domini Regis patris sui, suum fore Regem futurum, ac manu levata in Signum fidei dationis, promiserunt quod eum pro Rege suo futuro, volente Deo, habituri erint post mortem patris sui, ipsumque iurabunt & defendent*

de

ged, consented, & Faith as is premis'd, being Interpos'd, Promis'd. And that he had caused the People, with the Clergy, to be called together, that in their Presence, and with their unanimous Consent, it might be done and Published. That no Man might for the future in any wise pretend ignorance of this. And the whole Multitude of Prelates, Earls, Barons and others, as well of the Clergy as People, with unanimous Will and consonant voice, no one in the least gainsaying, Affirmed, Recognized, and Willed, that the said Lord John, as first Begotten, and Heir of his Father, should be their future King, and with Hand lifted up in sign of plighting Faith, promised that him for their future King, God willing, they would have after the death of his Father, and him will aid and

de toto
cunctis
bus fide
Com. e
101, fig
10 app
per. fu
101 immo
mis. an
subscrip
bellioni

Aff
pud A
na, me
supradi

Et
Rollo
D. pub
Notari
dication
nec non
levation
hannis
lo publi
venerab
tri Don
Sancti

de toto posse, contra quos-
cunque mortales. Qui-
bus sic actis, p̄fati Præl.
Com. & Bar. ib. existen-
tes, sigilla sua huic scrip-
to apposuerunt, ad per-
pet. futur. memoriam in
testimonium omnium p̄ae-
mis. una cum signo &
subscriptione publici ta-
billionis subscrips.

*Acta fuerunt hæc a-
pud Abbatiam de Sco-
na, mense, die, & Anno
supradictis.*

*Et Ego Johannes
Rollo Cler. Moravien
D. publicus Autor Apost.
Notarius, p̄æd. in-
dicationi, declar. affirm.
nec non promiss. manuum
levationi, ac Mag. Jo-
hannis de Peebles popu-
lo publicationi, una cum
venerab. in Christo Pa-
tri Dom. W. Wals. & Pat.
Sancti Andr. Glasguen.
&*

and Defend with all
their Power, against
all Mortals whatever.
Which things so done,
the said Prelates, Earls,
and Barons there be-
ing, their Seals to this
Writing affixed for the
perpetual and future
Memory, in Testimo-
ny of all the Princes
together, and Subscri-
bed with the Sign of
the Publick Notary
underwritten.

These things were
done at the Abbey of
Scone, the Month, Day,
and Year above-men-
tioned.

And I John Rollo,
Clerk of the Diocess of
Murray, by Authority
of Apostolical Autho-
rity, Publick Notary,
to the said Indication,
Declaration, Affirma-
tion, and also promise,
lifting up of hands, and,
Mr. de John de Peebles
Publication to the Peo-
ple, together with the
Venerable Fathers in
Christ, the Lords Will.
Walter, and Patrick, Bi-
shops of the Churches of
St. An-

& Brechen. Eccles. Epif. ac discret. viris Dom. Johan. de Carick Canonico Glasguen. W. Biggar. Rector Eccles. de Errol Cancel. & Camerar. Scotiæ, Nob. viris & potentibus Dom. Thomæ de Marr. Gulielmo de Douglass, & Roberto, Senescal. Comitibus, &c.

St. Andrews, Glasgow, and Brechen, and the discreet Men, Mr. John of Carriek, Canon of Glasgow, Will. of Biggar, Rector of the Church of Errol, Chancellor and Treasurer of Scotland, the Noble and Powerful Earls, the Lord Thomas de Marr, William de Douglass, and Robert the Steward, &c

Then the Notary says, He Sign'd with his usual Mark at the Instance of Lord John, the Lord the King's first Begotten Son, Earl of Carriek, and Steward of Scotland.

Upon so much as I have yet produced out of *Fordon*, and the Records, considered together, it appears beyond Dispute,

1. That the States of the Kingdom took to themselves a Power of Judging according to the intent of an Act of Settlement; The Words of the Act in Robert the First's time not going beyond the Person of Margery, though she should Marry with the Consent of the King and Kingdom.

2. As the Settlement went no farther, and 'tis a known Rule of Law, That nothing shall be extended by Equity, to the Prejudice of an Heir; if a new Consent of the States had not interposed, Douglass, if he had Baliol's Title, which

was

was not deny'd, would have come in by way of *Remitter*; as the *Settlement* which stood in his way was determined.

3. Whatever *Douglas* his Pretence might have been; here, according to the Notion of *Conquest*, was the *Judgment of God* against it: since, notwithstanding his arming to make good his Claim, he yielded to the *Superior Force* of the *Great Men*, who Oppos'd it.

4. There was an *Actual Cession* at the coming of *Robert* the 2^d. to the Crown: and if notwithstanding that *Cession*, the Marriage of *Douglas* his Son with *Robert's* Lawfully Begotten Daughter restored a Right to his Family, he and his Descendents were concluded by their express Consent to the Act, Declaring *John* the true and Lawful Heir of *Robert* the 2^d. and that he should as such Succeed to the Crown.

Therefore 'tis not necessary to consider, whether *John* was the Son of the first Wife or no.

It must be agreed, that the Act seems to leave it questionable in what Sense he was then accounted *Lawful Heir* of his Father.

If *Sir George Mackenz* were to be rely'd on, where he contradicts the very Authorities which he presses upon others, there is no room to doubt but *John* was the Son of the first Wife: for *Sir George* pretended to give the Substance of a Second Act of Settlement, which he promised to Insert at the end, word for word, wherein he says, *John* is called his

L¹

Eldest

*Right of
the Successor
P. 94, 95*

Eldest Son by *his first Marriage*: That he might well be called his Eldest Son after the Act 1^o. of his Reign, is past Dispute.

Looking at the End for Confirmation of this,
I find this Advertisement instead of it.

Postscript. " In regard there is Page 194, 195. Men-
" tion made of an Act of Parliament, Deter-
" mining the Succession tof Robert the Second's
" Children, and Referr'd to here; upon fur-
" ther Consideration the Author has thought fit
" to defer the Printing of it till another time; the
" Substance of it being Inserted in the said Page.
In so much as Sir George had thought fit to
" give of the Second Act, it appears to
" have been, on purpose to secure the Succession, and
" to prevent all Discords that might afterwards arise
" in any part of the Kingdom, about Titles to the
" Crown.

It seems at least, that the *Sacred Tradition* of the *unalterable Series* of Successions, was not generally received: for it must be agreed, that Passage might be applied to that Uncertainty, as well as to any Doubtfulness of the Lawful Birth of *Robert* the Son of *John*.

As Sir George seems to have stretched the Authority of the Act, to put the Lawful Birth past dispute, with all who would acquiesce in his Authority; it may be evident that the Scotch College of Jesuits, or other Popish Order at Paris, have cast a greater Blemish upon it, by a pretended Charter, which carries with it apparent marks of Forgery.

They

They, being expert at their Trade, might easily impose upon Men of Quality, to whom they produc'd a *Charter*, seeming of the time, with formal *Seals* and *Subscriptions*.

This was pretended to be a *Charter* of *Robert* the 2^d. when he was but *Steward* of *Scotland*; and yet makes him, in the *Stile* of a *King*, to say, we have affix'd our *Seal* to it.

The *Charter* pretends, that *Robert* had delegated the *Bishop* of *Glasgow* to the *Pope*, to obtain for him a *Dispensation*, to Marry *Elizabeth Mure*, notwithstanding the impediment of *Consanguinity* and *Affinity*: which was granted, provided *Robert* would erect 2 *Chapels*, or one, at the pleasure of the *Bishop*.

Lord Tarbat's Vindication.
p. 28.

Therefore he granted to *God*, the *Blessed Virgin*, and *St. Kentigern*, and to one *Chaplain*, 10 *Marks* *Sterling*, to be receiv'd out of the *Annual Rent* of 40 *l. Sterling*, out of the *Land* of the *Abbot* of *Caras*, in the *Sheriffwic* of *Striveling*; to be receiv'd by the *Abbot* and *Convent* of the *Monastery* of the *Holy Cross* at *Edinburgh*, for the use of the *Chaplain*: Subjecting himself and his *Heirs*, to the *Bishop* of *Glasgow*, and his *Official*, Dated at *Perth* the 12 of *Jan.* 1364, and attested by *John Steward*, his first Son and *Heir*, *Lord* of *Kyle*.

Where,

1. The *Scotch Fraternity* make a *King* of *Robert*, before his time; not only in his *Stile*, but in a fancied *Regal Power* to put himself and his *Heirs*, under what *Bishop* he pleased, in whatever *Diocess* he or they lived, or should live.

Sir. G. M. 2. Tho' the Lord *Tarbat* has ascertain'd the Fa-
 Right of maily of *Eliz. Mure*, whose name in Latin was
Succession *Mora*; and consequently might know what re-
 defended, lation, if any, there had been between *Robert*
 p. 193. and her, before they came together; his Lordship
Elizabetha has not found out any *Consanguinity*, or *Af-*
Mora a- finity.
gnoskitur
Prima Ux-

or, & Eu-
phemia Rof-
secunda.

P. 17.

3. The suppos'd Grant of 10 *Marks* to a
Chaplain, is not pretended to be supported by
 any Payment, or so much as colourable de-
 mand.

4. But that which manifestly detects this, is,
 that in the Year 1364, *John* the Son is stiled
 Lord of *Kyle*, which is abundantly disproved by
 an undoubted Record produced by the Lord
Tarbat, and confirm'd by others.

P. 17.

The Lord *Tarbat* produced a *Charter* of King
David, which he held to be 37 Years before
 the Death of *Eupheme*, whom the *Scotch* Histo-
 rians will have to be the first Wife of *Ro-*
bert the 2d.

This falls to be in the Year 1350, in which
 Year, according to the Lord *Tarbat* himself,
 a *Charter* of King *David's* was attested by *Ro-*
bert, and his first begotten Son and Heir *John*,
Steward, *Earl of Carric*.

Vid Mr.
 Rymer's
 first Letter
 to the B.
 of Carlisle.

From that time it appears by numbers of Re-
 cords, that *John* had the stile of *Earl of Carric*,
 sometimes *Steward of Carric*; that *Stewardship*,
 it seems, being an *Earldom*.

But

Beside
 Bull,
 been

But no Man can pretend that an *Earl* was ever known to Subscribe any Deed, or *Charter*, only with the Title of a *Barony*.

This therefore is an undeniable evidence of a late Contrivance by ignorant *Monks* : And their blunder here might, possibly, be occasion'd by finding *John Lord de gla*, called Son of *P 6. Robert*, as he was Son-in-law, having Married his Daughter *Margaret*.

They who value themselves upon their Suppos'd Impartiality, in rejecting the *British Stories* of *King Arthur*, and the *Charter* engraven by *Mr. Rymer's* direction, of *Homage to Edward the Confessor* for the *Kingdom of Scotland* ; would think themselves secure in denying both, if *Jesfery of Monmouth* were the first who mention'd *Arthur's Story*, or there were no other Foot-steps of *Homage* done the *Confessor* for *Scotland*, or *Investiture* of it from him, earlier than *Queen Mary's* Reign, as *Mr. Ridpath* supposes. And yet this *Charter*, pretended to be *Robert the 2d's*, tho' it never started up till *Mr. Hunt* had reviv'd the Story of *Elizabeth Mure*, or the Duke of *Monmouth's* Competition with a *Popish Successor*, call'd for that a *pious fraud*, is swallowed by these impartial Men, without chewing ; they not considering, that the constant course of the *Scotch Historians* affirming the Story, must necessarily have occasion'd an early disproof, if there had been any of that kind.

Besides, they might have found the *Pope's Bull*, as well as the *Charter* pretended to have been occasioned by one.

Scotch Hist.
Lib. p. 151

The Bishop of Carlisle, speaking of King Robert, Father of that John, says

“ One of the main occurrences of this King’s life, has been *witely* mis-represented by the best Historians of Scotland, who generally report, that *Eliz. Mure* was only his Concubine, when she bore her Son *John*, afterwards King, by the name of *Robert*, the 3^d. who was legitimated after his Father’s accession to the Throne, and prefer’d to the Lawful Issue of his Rightful Queen *Euphemia*.

If the *Historians* affirm’d that *John* was not Legitimated till after *Robert* 2^d. was King, it must be agreed, upon the Records produced by the Lord *Tarbat* and Mr. *Rymer*, that the Scotch Historians were in the wrong; for *John* was accounted *Robert’s* Son and Heir, several Years before the Father was King.

Sometimes he was call’d *first begotten Son and Heir*, and *Steward of Carric*, and more generally Earl; but that of Lord of *Kyle* was certainly an ignorant *Monkish Invention*.

It must further be agreed, that his Mother’s name was *More*, or *Mure*, and the Lord *Tarbat* produces a Record in the 12th. of King *Robert’s* Reign, of a Grant to one *John Steward*, or the *Steward*, begot between him, and his belov’d *Moram*, as his Lordship disguises the name of *More*, by using the Latin Word in the Accusative Case.

It cannot therefore be denied, that the Mother of this *John*, whom his Lordship calls a Concubine, was *More*.

The

The Lord Tarbat says, That in the Story of Elizabeth Mure, and her Son John, Major, Boatboys, Lesly, and Buchanan, have followed one another. Vindication of R. 3. p. 2.

And though Sir George Mackenzy set up Lesly for an Author, who Writ with all the exactness; that the truth of History required; his History being drawn from the Ancient Records and Monasteries of the Kingdom,

The Lord Tarbat says,

Lesly had no Design in Writing his History, " but to Assert his Queen's Right, and Resent " the Injuries done her: and therefore minded " little to put his Authors to the Test:

However, it appears by his Lordship's own way of Arguing, that Bishop Lesly was wiser than to think that Story which he received, could be any prejudice to the Divine Right, which the Law of his Country, and the Consent of the Chief Lord of the Fee, had transmitted to his Queen.

The Lord Tarbat says farther,

" Perhaps, even the first of the Historians, " by a supine inadvertence, having heard " that Robert the 2d, after Queen Euphem's " Death had Children by a Concubine, to " whom he had a great Kindness, and that " his Concubines Name was Moram; did ignorantly confound his Concubine Moram, with " his first Wife Mure.

This Conjecture, he says, is founded upon a Charter of the 12th. of that King's Reign, Granting several Lands to *John* begot

Inter nos & dilectam No-
fram Moram.

Between us and
our Beloved *Mure*:

'Tis observable, that his Lordship will have the Children by the Concubine, to have been Born after the Death of *Eupheme*. Forgetting that he had cited *Fordon*, to prove that *Eupheme* did not die till the Year 1387; whereas the Historians, and the Act of Parliament produced by his Lordship, shew, that *Robert* came to the Crown in the Year, 1371. So that *Eupheme* did not die till the 16th. of *Robert* the 2d. but the Charter to *John*, the Son of *Mure*, was in the 12th. which makes it evident that *John* was Born before *Eupheme* died.

The Bishop of *Carlisle*, possibly, observing this, will have it, that the Lord *Tarbat* was mistaken in the date of that Charter.

Though my Lord *Tarbat* cites *Fordon* himself, to prove the Death of *Eupheme*; he will not allow him to have known any thing of the Birth of the Children by *Mure*: and will have that Story added by his *Continuator*.

The Story, as 'tis to be found in the *Scotocronicon*, according to the Extract which I took several Years since, is thus,

" In

" In the Year 1390, Robert the 2^d King of M. S. de
 " Scotland, dyed on the 13th. of the Kalends of Fordon
 " May at his Castle of Dundowald, and Reign'd ^{per prae-}
 " 19 Years and 23 Days, he lived 74 Years: ^{notab. Ar-}
 " he was Seven Years younger than his ^{thur. Com.}
 " Uncle David. That King Robert, of Lady ^{de Angl.}
 " Elizabeth Daughter of Lord Adam Mure, be- ^{Communi-}
 " gat 3 Sons, to wit, John, who afterwards was ^{cas. Magi-}
 " King, and Robert Duke of Albany, and Alex- ^{stro Petys,}
 " ander Earl of Buchan, who was commonly ^{cujus bene-}
 " call'd the Wolf of Badenach. After this he ^{ficio hoc}
 " Marry'd Eupheme Daughter of Hugh Earl of ^{debes. l. 14.}
 " Ross, of whom he begat Walter Earl of Athol, ^{c. 54. De-}
 " and Lord of Brechin, and David Earl of ^{hinc despon-}
 " Strabern: But Queen Eupheme being dead, he ^{savit Eu-}
 " Married the Lady Elizabeth, and so by virtue ^{phemiam.}
 " of the Second Marriage supervening, the
 " said Persons were Legitimated, to wit, John,
 " Robert, and Alexander.

This Author concludes (a) with the Death
 of J. I. In the Year 1436. and (b) as him-
 self says, was Born in the Year 1387.

(a) Lib. 15.

cap. 1.

(b) De An.

1387. Obije

Unphemia

Regina

Scotiae,

natus est

author

hujus ope-

ris.

(c) His right

of the Suc.

p. 200.

" Sir (c) George Makenzy says, he has seen in
 " Fordon's History, Lib. 14. p. 73. a Charter
 " Granted by King David to the Bishops, with
 " the Consent of Robert his Nephew, and his Sons,
 " in which Charter the Witnesses are, Robert
 " Steward, Earl of Strabern our Nephew, John
 " Steward, Earl of Carric first begotten
 " Son and Heir, Thomas, Earl of Mar,
 " &c.

This shews, that the Author, or Authors
 of the *Scotocronicon*, being appriz'd that John
 was

was call'd Son and Heir of Robert, in the Life time both of King David, and Eupheme; could not be so weak as to imagin, that John's first Legitimation was by the *supervening Marriage* of the Concubine, after Robert came to be King, and his Queen Eupheme was Dead.

On the other side it must be agreed, that without supposing a *Legitimation*, either by Letters Patent, or Act of Parliament, in King David's time; that *Chronicle* has overthrown its own Story, and all the Historians who followed their most Celebrated *Chronicle*, either were easily impos'd on, or wilfully blind.

I shall not pretend to affirm, or so much as suppose a matter, of which all their *Historians* seem silent; yet if there had been such a *Legitimation* before the *supervening Marriage*, 'tis no wonder that Fordon, or his *Continuator*, in the dark times of *Papery*, should count that which was according to the *Canon-law*, preferable to what was by any *Civil-law*.

Sir Thomas Craig says upon the like Case.

£ 339.

“ This *Posterior Legitimation* looks back also,
“ and the Marriage is presum'd to have been
“ Contracted from the beginning.

At least, he holds this Legitimacy to give preference in such things as are afterwards
“ acquired, which in the time of former Wives
“ were neither possess'd nor hop'd for.

Upon this account, because of the possession of H. 4, 5. and 6. he supposes the *Legitimation*, by the Duke of Lancaster's Marrying Catharine
Swin-

Swi-
dren
T
thous
from
T
Bras
in a
State
of th
their
H
the C
ever,
ceede
ing b
of Se
for hi
Scotl
Stewa
dom,
due Su
And
like C
Naples
possess
grant
It n
Object
from
Judgm
the lea
Mother
Mar
of her

Swinsford, to cut off the pretensions of his Children by former Wives.

These Successions were not under that *Legitimation*; but only Diversions of, or Digressions from, the suppos'd strict Right of Descent.

The same appears in the Succession of the *Brans*'s, contrary to the true Right of Descent in the Family of *Belio*; not but that the States of the Kingdom, if they had the consent of the Lord of the *Fee*, did not go beyond their Power of chusing within the *Royal Family*.

Hitherto we find not that they had settled the Crown upon *Robert* and his Heirs: However, *James* the 1st. the Son of *John*, who succeeded by the name of *Robert* the third, having been receiv'd by the States of the Kingdom of *Scotland*, after *Investiture*, and doing *Homage* for himself and his Heirs, for the Kingdom of *Scotland*; from that time the Family of the *Stewards* had an undoubted Title to that Kingdom, as long as they kept their Kingdom in due Subjection to the Head of the Monarchy.

And this *Sir Thomas Craig* has resolv'd in the like Case, where he says, seeing the Kingdom of *Naples* was a *Fief* of the *See* of *Rome*, It is not possess'd by Right of Succession, but by the grant or concession of the Superior Lord.

Of the Succession.
f. 308.

It must be further agreed, that whatever Objection lay against their 7th. the 6th. our First, from the Machinations of his Mother, and Judgment thereupon; he had a good Title, not the least touch'd by any blemish affixed to the Mother.

Vid. Sup.

Margaret Daughter to *H. 7th*. after the Death of her Husband *J. 4th*. Married *Archibald Douglas* Earl p. 10.

Laflaus.
Disucces.

Earl of *Angus*, by whom she had *Margaret*, who Married *Matthew Steward* Earl of *Lenox*.

Margaret Douglas had by the Earl of *Lenox* two Sons, *Henry* and *Charles*. *Henry* was born in *England*, and coming into *Scotland* to see his Father, being very desirable in his person and behaviour, obtain'd the Favour of *Mary Queen* of Scots to be chosen for her Husband: which choice, *Bishop Lesly* says, the *Queen* made, "perceiving that a Right would accrue to her "from thence, since *Henry* was born and Educated in *England*, and might supply all defects, if any could be objected against *Queen Mary*.

King James the 6th. of *Scotland* having, upon an undoubted legal Right, been recogniz'd King of *England*, that thereby the Right became Divine, and *Scotland* was, by the same Right, annex'd to the Imperial Crown of *England*, has appear'd at large.

Some part of the numerous Evidences of which, with occasional Remarks, I shall sum up as briefly as well as I can.

CHAP. XLII.

A Summary of the State and Nature of the whole Controversy, and of the Principal Proofs of the Right of the Crown of England over Scotland.

W Herein soever the Merits of the Controversy lye, I cannot but think it evident, that no denial of the *Scots*, grounded upon any

any Records or Histories among themselves, can in the least diminish the credit of the *English Histories*, supported with *Charters*, and other *Records*, of the respective times ; and this Demonstration arises, not only from the *true Antiquity* of our publick Accounts, and the *Novelty* of all theirs, but the little Credit which themselves now give, to the best and most ancient of their *Historians* ; the disagreement between them all, and their suppos'd Sacred, tho' varying Tradition ; and the testimony which Foreigners have given, particularly *Bodin*, and *Gerard du Hailon*, concurring with our *Records*, and *Histories*.

Besides all which, if they believe the *Father* of their *Historians*, *Fordon*, all our *Registers*, preserved in *Monasteries* of *Royal foundation*, are to be look'd on as *Records* ; in which there was a Moral impossibility that there should be Material errors, in relation to the Principal Transactions with other Nations ; unless we can think our *Peers*, and *Representatives* of the People, from Age to Age, Conspired together in transmitting gross Falshoods to credulous Posterity.

To come then to consider the Result of such Evidences.

As in a former Treatise, I proved the *Scots*, and all other Inhabitants of *Ireland*, that first Kingdom of *Scots* in *Europe*, to be within the *English Monarchy*, in the time of the *Saxons* ; and from within the Reign of *Henry the 2d.* governed by the Laws of *England* ; I may here satisfy all unprejudiced persons, that the *Picts* first, and afterwards the *Scots*, and others, who have been

Vid. The Hist. and Reasons of the Dependency of Ireland.

been any ways Possessed of what is now called *Scotland*, were, before the times of the *Saxons*, Subjects of the *British Imperial Crown*; and upon the Translation of the *Monarchy* to the *Saxons*, and alteration of the Stile, of the *English*; under which *Crown* they have ever since continued: That whatever temporary departures there may have been from Duty, the *Kings* and People of those Parts, have sufficiently recognised the *Right of this Crown* from Age to Age; by the *Investitures* of their *Kings*, as well as *Homage* for their Kingdoms; by their frequent Attendances in the *Parliamentary*, or other *High Courts* of the *Monarchs* of the *Island*; the Oaths of *Allegiance* frequently renewed by their Subjects; and long Obedience to the *English Laws*, in *Church* and *State*.

For these matters, the course of *Evidences* and *Authorities* is so strong and diffusive, that the excepting against several of them, if any reasonable exception may be taken, unless the whole Stream can be diverted, would be but like going to empty a River with a Bucket.

And I hope I shall not be thought over Credulous, or Contentious, in urging some *Authorities* which have of late been controverted; till they are brought in Question by like *Authorities* of the Times: especially where *Circumstances* evince, not only that there was no occasion to Counterfeit any Proof of *Homage* for the Kingdom of *Scotland*; but that it must needs have been then expressed by Deed, in notoriety of Fact, if not in words at large,

If the sole Question were, as it is not, of *Homage* always expressed for the Kingdom of

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Scotland; the Scots would have no reason to value themselves, upon any want of Proof of Homage for that Kingdom, in the British times, or the beginning of the Saxon Monarchy; since the only Reason was, that the Scots had then no Kingdom here, and their Antient Kingdom of Ireland is swallowed up in those Bogs, or rather, in the Crown of England.

But the Picts here, and other Possessors of the now Scotch Bounds, if they did not Homage, at least own'd and paid Subjection to the British Monarchs; to which they were to Swear Allegiance in the general Folemore, by the Constitution of King Arthur, preserved in that Body of our Common-Law, which has been continued downwards, as the Fundamental Law of the Monarchy, which is part of the Oath of our Monarchs, and Admonishes them of their Obligation, to keep the Scots, and Picts, of Albany, in due Subjection; as their Country is an Appendage to the Crown of the Island.

Though 'tis but matter of Curiosity, not Essential to the main Controversy, that there was not only Allegiance Sworn, but Feudal Homage done in the British times, and consequently by Picts and others then Settled here, wants not Proof.

But the chief Question is not of Feudal, but Liege-Homage, or Allegiance; of this it cannot be denied that the British Monarchs were duly Possessed throughout the Island: and Sir T. C. himself receives an indubitable Authority, as far as he thought it for his Purpose, which shews, that the Renowned King Arthur laid a wise Foundation for the Security of this Monarchy,

chy, in obliging all the Inhabitants within this Island, once a Year to repeat their Oaths of Allegiance to their Supreme King, whom God, Nature, and the Laws, had set over them.

From Cadwallader the last King, entirely British, the Monarchy of the whole Island was duly Translated to Ina, upon a British and Saxon Title.

Anno. 827. Egbert being, in a general Council of all Britain, Crown'd Monarch of England, in the Year 827; then began the English Monarchy, as distinguish'd in name, not in reality, from the British.

But the Graft gave Denomination to the Stock, which stood Possess'd of the Right of the Soil.

Sir T. C. of the Succession. f. 268. The Confessor's Law receiv'd by Sir Tho. Craig, is so clear, not only in the Derivation of the Right of the Monarchy from the Britains to the Saxons, but in the Subjection of the Scots, and all other Inhabitants within the Island, to the British, and since to the English Crown; that one would wonder Sir Tho. Craig should have overlook'd it, or with what Art he should pretend to evade it.

This has appear'd sufficiently from such part of those Laws, as he had cited in his Treatise of Homage; and has been further confirm'd by other parts, which he then thought fit to conceal.

In his Treatise of the Succession, he finds occasion to give more of the Law which yet, he durst not venture abroad without some previous Antidote.

“ The

'The Title of the *Statute*, he says, is first to be considered, that is concerning them who, of Right are enabled, and ought to cohabit, and to remain in the Kingdom of England. f. 266.

'For *Debent* is a Word of Law, and infers Right and *Cohabitare in Anglia*; imports nothing less than to enjoy the same Laws and Privileges with the *English* Inhabitants. For otherwise were it to be understood barely of living, as that the *Scots* might dwell and remain in *Britain*, they could not owe that to any *Statute* or *Favour* of *Edward*, when as they had then liv'd in the Kingdom of *Britain*, by their own Right, and as elder Possessors long before the *English Saxons*. But the word *Britannia* is there taken for that part of *Britain*, which had been a *Province* of the *Romans*.

His Admirers may not discern the weakness of this evasion; but,

1. Does it follow, that because *Debent* infers nothing less than to enjoy the same Law, it infers nothing more; and does not infer Right to Cohabit under the same Law?

2. Is it enough not to owe the Right of Cohabiting in the *Island* to *King Edward*, or any *Statute* of his, or of any other *Saxon King*; when that *Statute* derives the Right of the *Saxon Monarchs* from the *Britons*, who had been first possessed of the *Monarchy*?

3. If the *Saxons* were possessed of the *Monarchy*, before ever the *Scots* had any Kingdom here, the *Scots* tho there never had been any Express *Statute* in the case, must necessarily owe their living here to them, and be Subjects of that *Monarchy*.

4. 'Tis absurd to say, that this was, by the meaning of that act, confin'd to that part of *Britain*

tain, which had been a *Roman Province*, within which 'tis supposed, that but a little of what the *Scots* now possess was compriz'd; for if it were so, no right is shewn for the *Scots* to dwell within the *Island*: when the plain intent both of the Title and the Body of the Statute, was to shew, that the *Scots*, and all other Inhabitants of the *Island* were Subjects of the *British Crown*, since *English*.

'Tis wonderful that Sir *Thomas Craig* should not discern this, in so much as himself had cited of that Statute.

f. 167. His own quotation shews, that *Ina* was King of the *English* and *Britons*, upon a *Saxon* and *British* Title; how the *Scots* came to a Coalition with them, and so they were then thro' the whole Kingdom of Britain two in one Flesh.

f. 168. Sir *Thomas Craig's* Editors, presuming that their Translation would pass upon most Readers, tho' the Text stood on the side render it [strough- out all Britain] that it might not be observed how all Britain made but one Kingdom, of which the *Scots* were Subjects as well as the *Britons* and *Saxons*.

I cannot pass by another perverse Translation to continue the imposition,

Et saliter constituit Regnum conjugium. And so the Kingdom constituted a Marriage.

This was a pursuing the Metaphor that two became one Flesh; but Sir *Thomas's* Editors render it thus Marriage settled the Kingdom.

Yet they knew not how to pervert what follows in their own Words.

Per uni-
versum
Regnum
Britannia.

'An

And abolish'd Fornications (which there must be meant of submitting to any power, but the Crown of the Kingdom) and barred and pruned from it, and righteous Laws were made for the establishment of the Kingdom, and for strengthening the People by a gracious carefulness. And by such methods by the Divine Mercy they became one Nation, and one People over all Britain. All these aforesaid did ever afterwards stand stoutly, as one Man, for the common utility of that Kingdom against the Danes, &c.

The said Ina was a most excellent King, governed the Church, and united and strengthened the Kingdom by his great Wisdom and Prudence, as well as by War and force of Arms, when there was occasion.

Here again is a willful omission. the Words being *Regnum Confederavit, Consolidavit, & in unum pacificavit*; and the Kingdom he Confederated, Consolidated, and Peaceably brought in to one.

They must be very blind who cannot discern that this Kingdom, was not confined to what has been thought the extent of the Roman Province; but took in the whole Island, and the Scots by name were Subjects, not only to Ina; but to his Successors in the British and English Monarchy.

5. If what has been cited by Sir Thomas Craig could admit of any doubt; it is yet, if possible, more indubitable upon other parts of that Statute. After the praises of Ina it mentions the extent of the Island of Britain, 800 miles in length, 200 in breadth, and says 'tis inhabited by 5 People, the Normans, Britons, Saxons, Picts and Scots.

Quinq;
Inhabita-
tur Popu-
lis.

Ex quibus Britones olim ante omnes Cæteros Antecessores suos, a mari usq. ad mare insederunt, donec ultione divina propter ipsorum superbiam, Pictis & Saxonibus cesserunt.

Of whom the Britons of old beyond all the rest of their Ancestors, possessed it from Sea to Sea, till thro Divine wrath for their pride, they yielded to the Picts and Saxons.

Where the Scots are none of the People, whom God had made use of to punish the pride of the Britons.

In another part which I had cited above, having mentioned the Picts and Scots of Albany, it adds,

Est enim Albania pars Monarchiæ Regni hujus, quod olim vocabatur Regnum Britannia.

For Albany is part of the Monarchy of this Kingdom, which of old was called the Kingdom of Britain.

The Picts, Britons and Daelreodian Scots, being Subjects of this Monarchy when British, as this Statute and Histories evince, stood in the same relation to it when the name was alter'd.

The Picts and the Stræced Welsh, the * Caledonian, Cumbrian, and other Britons had subordinate Kings in the British Times, but whatever Kings the Scots had in Ireland, they had none
set-

* Irvini Hist. Scot. Nomenclatura, p. 33. Caledonia properly signified that Country that lay amongst the face of the Hills from Aberdeen unto Cumberland, and is oft taken for the whole Kingdom of Scotland.

settled, here till after the *Monarchy* was established *English*: and still the People with their *Kings* were *Subjects* of the one *Kingdom*, as the *Confessor's* Law shews, consolidated by *Ina*, and founded upon a *British* and *Saxon* Title.

After *Egbert* had continued the *Consolidation* under an *English* name, *Cunedda* or *Kenneth* the Son of *Alpin*, by a Victory over the *Picts* in the year 843. when *Ethelstan* the Son of *Egbert* was *Monarch* of all *Britain*, took the *Royalty* from the *Picts*, and succeeded into the *Pictish* State of *Dependency* upon the *Crown* of this *Monarchy*.

If the *Picts* did not recover *Regal Power*, they soon rallied their *Forces* together, and for a long time after continued a Nation distinguished from the *Scots*, even as late as the famous *Battle* of the *Standard* in *King Stephen's* time.

The *Strawled Welsh*, for certain, had *Kings* of their own, a considerable time after the *Scots* had *Kings* settled here, and the *Lothians*, which were called *Pictland* by way of eminence, continued still in the *English* Hands, and made no part of the *Kingdom* of *Scotland*, for several Successions of the *English Monarchs*. When the *Danes* possessed themselves of the *Northern* parts of *England*, such of the *Picts*, *Scots*, and *Northern Britons*, as were not immediately under the *Protection* of the *English*, submitted to the *Danes*; and yet the *English Monarchy* continued, was asserted by *King Alfred*, and fully restored by the worthy Son of such a Father *Edward the Elder*.

The *Feudal Law*, which may be discovered by no obscure traces of the *British times*, now appears in the pomp of supposed *Modern Terms*, and every *Reign* furnishes proofs of it. *Military*

Tenure, and Homage incident to it, appear beyond all colour of dispute.

*Defence of
the Antig.
p. 148.*

I cannot but here observe the fabulousness of the *Scotch Historians*. Sir George Mackenzie says, 'all their Historians agree, that Gregory the Great King of Scotland, who died in the year 892. added Northumberland to the *Morse*, and having defeated the Britons at *Lockmaben*, he forced them to renew their *Ancient League*, and to confirm to him the former Rights his Predecessors had got from them, to Cumberland and Westmoreland.

It seems Sir George and all the *Scotch Historians*, overlooked the Evidences for above 60 years; before that time that the *Monarchy* had been English, and neither Britons nor Scots could make any League, much less confer a right to any part of the Kingdom.

That the Kings of the Scots did Homage then, and before, their best Advocates agree. For what this was, is the only question they pretend to raise.

*Sir T. C.
f. Homage,
p. 153,
154.*

Sir Thomas Craig, as if he had never read any thing of the Danes in England, will have it that the Scots 'enjoy'd Northumberland, Cumberland, and Westmoreland Peaceably, all King Alfred's time, as they had done from the Reign of Gregory, who had taken them from the Britons, and the English, altho the English Annals affirm, that they were freely granted the Scots, as a reward of their joyning in Arms with them against the Danes.

*Chron.
Sax. sup.*

One would think Sir Thomas never intended to publish such an Appeal to the English Annals, which are express, that Alfred was chosen King of all

all England, except that part which was in the power of the Danes; and that the King and People of the Scots and Regwald and Eadulf's Son, and all the Northanhymbrians both English, Danes, Men of the North, and the King of the Strathed Welsh with his People, chose Edward Son of Alfred for Father and Lord.

The Scotch Chronicle of Mailroß says, *fecerunt homagium*, they did Homage, that the Homage done by the several Kings, was for their respective Kingdoms circumstances evince; their People joining with them in the Recognition of Subjection, to an establish'd Monarchy: and it cannot be deny'd that where-ever a Nation so joins with their Prince, this is even a fuller instance of the Subjection of the Kingdom, than their King's expressing it at the time of his doing Homage. This Homage therefore, and Recognition of the King, and Nation of the Scots, being without the least Relation to any of the suppos'd beneficiary Lands, which were manifestly possess'd by others, overthrows the foundation which Sir Thomas Craig and his Followers build upon; if there were not concurrent evidence, that the Kingdom of England was a Monarchy, into which all the parts of the Island of Britain, or Albion were consolidated. As Edward the Elder had throughout the Island been received as Father and Lord.

The Authorities are no less plain of Edward's Son Athelstan. If the Monarchy had been wavering till then; he at least fixed it, and according to Ethelward, whose Credit Sir Thomas Craig endeavours to impair, no otherwise than by lessening his Antiquity, the Scots and Picts submitted to him, all the Fields or Territories of Britain were consolidated. The Oaths given to the then English

(a) Hist.
Dun. ec.
suble con-
stituit
regnatu-
ros.
(b) f. 265.

Monarch by the King of Scots, and other *Subject Kings*, must needs be for their *Kingdoms*; as they had *Investiture* from him, and were constituted *Kings* (a) under him. Till the time of *W. 1.* according to Sir *Thomas Craig* the Scots submitted to this State of Subjection, for he says from the time of *Athelstan* to the Conquest being 140 years, the Scots lived in the closest Friendship with the English, and in their Wars had the same Friends and Enemies.

If any are so nice, as to require a proof of all the circumstances seeming, by Foreign Feudists, requisite to make an *Investiture*; Sir *Thomas Craig* speaking of *Queen Elizabeth* as lawfully Invested in her Kingdom, says, *Coronation* is instead of *Investiture* and *Seisin*. Whenever, therefore, a King of Scots has been Crowned by the appointment of the King of England, this must be agreed to have been an *Investiture* from him. And tho this might be at times when *Homage* could not be performed because of the absence of the Superior; we may well give credit to Historians, who mention pledges for the performance of the Duty.

From *Athelstan's* time our Kings in their Charters executed in *National Assemblies* used *Stiles* asserting their *Rightful* exercise of *Monarchical Authority*, over all the Kings within the *Island of Britain*, or *Albion*.

Which Title has been acknowledged by Kings of the Scots, as well as others, who attended in their Courts, and attested their Charters.

An. 945. The first pretence of any King of the Scots to land in England, was in the year 945. When the English Monarch *Edmund*, granted the Government of *Cumberland* to *Earl Malcolm*, but if he

he was then King of Scotland, the Grant of that was far from discharging the Prior Subjection of Prince and People.

Accordingly the Nation of the Scots swore Allegiance to his immediate Successor King Edward.

Tho *Malcolm*, to whom our King *Edmund* granted *Cumberland*, might possibly at that time be King of Scotland; yet the *Scotch* Crown was not like the *English*: and therefore if it had been Granted to *Malcolm*, and his Heirs, it was but a private Inheritance, which would not follow a Dependent Crown. 'Tis certain, that in our King *Edgar's* time *Kinedy*, King of the Scots was Homager and Subject for his Kingdom within *Albany*, which seems not yet to have been called Scotland, and at the same time *Malcolm* was King of *Cumberland*.

And before that time the *Northanbymbrian* Kingdom was united to the Crown under *Edward*, and governed by *English* Earls.

In the Reign of that glorious Monarch, *Edgar*, the Superiority and Direct Dominion of the Crown of *England* over all the Nation of Scots, was so fully recognized and submitted to, that they who deny it, must think the account of his extensive Empire as fabulous, as many fancy the whole Story of King *Arthur* to have been; and numbers of his Charters must pass for Forgeries.

Sir *Thomas Craig* was not sensible how much T.C. he was beholden to *Hollinshead*, for admitting p. 215: that *Edgar* restored *Lothian* to *Kenneth*; but there is no Authentic proof that the Scots had *Lothian* till the *Confessors* time, when it was taken out of the *Northanbymbrian* Earldom, and given as a Dowry with *Edgar Atheling's* Sister.

If

If it could be supposed that *Lothian* had been in the hands of *Scots*, before the time of *Canute* the *Dane*; then, at least it was restored to the *Crown of England*.

In his time there Reigned together 3 Kings of the *Scots*, who all obeyed him, and the Kings and People were Subject to the *English* Laws, enforced by him and his general *Dimase*, while *Earl Worn* governed *Galloway*.

The *Confessor* with the *Crown of England*, as we are assured by his Laws, had the Kingdom of *Albany* as an *Appendage*; all the Nation of the *Scots* were Subjects of the *Monarchy of Britain or England*; were under the same Oath of *Allegiance* with the *English*, and bound to defend all the Rights of the *Crown*, and the Person of the *Monarch*; and once a year to attend at the *Folcmote* in Person, or by representation: and upon this account they were *Denizens*, entitled to all the Privileges of *Englishmen*, as long as they performed the Duties of Subjection, but no longer.

These are the Laws which our Kings from time to time have sworn to maintain, and which *Sir Thomas Craig*, and others, appeal to, to prove, that the *Scots* are *Denizens of England*; but as the whole course of the *Common Law* proves, that no Man can be a *Denizen*, but as he owes *Allegiance* to the *Crown*, and tho he owes that may lose the *Privilege*, which the performance of his Duty might entitle him to; that Body of the *Common Law*, which the *Confessor* revived, and *W. 1.* and his Successors confirmed, shews, that the *Scots* were accounted *Denizens*, as Subjects of the *British Monarchy* then called *English*; and as their Country was an *Appendage* of the *Crown*.

Mal-

Malcolm received the dependent Crown of *Scot-* Vid. Lord
land, from the Investiture of the Confessor ; and Coke's
 therein, as Sir *Thomas Craig* acknowledges, was Pref. to
 King *Edward's* Homager and Vassal. the 2:th
 Rep.

After this, as *Ordericus Vitalis* shews, the Con-
 fessor gave him *Edgar Atheling's* Sister *Margaret* to
 Wife, and the *Lothians*. If upon this being ad-
 ded to the King of the *Scots*, he set up for a King-
 dom of *Scotland*, he might well be glad to do
 Homage for the Kingdom by name, to give him
 so proud a Title.

And it must be agreed, that the Subjection of
 all the Nation of *Scots* before, was so evident,
 that if the Charter of Homage for the Kingdom of
Scotland, now among the Records of our Trea-
 sury, as done by *Malcolm* to *Edward the Confessor*,
 is Counterfeit, it must have been counterfeited
 by the *Scots*, to justify their Claim to a Kingdom
 of *Scotland*.

'Tis certain, such a Charter was not in the least
 wanting, to prove the subjection to the Imperial
 Crown of *England*, of the Kingdom of *Scotland* ;
 whensoever it first sprung up from among the
Scots of *Albany*, the *Picts* of *Pictland*, and other
 parts, and the *Caledonian Britons*, and others.

Besides that no objection of Weight has been
 published against that Charter, which Mr *Rymer*
 had caused to be engraven ; it will not be easy
 to blemish the exemplification of it in the Lord
Longvil's Library, in placing which among his
 Collection, that noble Lord's Learned and Judici-
 ous Ancestor, has stamp'd it with his approbati-
 on.

Among the particulars, in which Sir *Thomas*
Craig take the facts to be with him, and if he
 fail in any of them, he admits, that the King of
Scots

Scots ought to be accounted *Liege Vassal*, and *Chyent*,
 2. 62, 63. to the King of *England*; one is, 'if there were
 ' not always more than Capital Enmities betwixt
 ' the two Nations, and if there were not the most
 ' cruel Actions that could be, War, &c. betwixt
 ' the two Kingdoms. Indeed it were but ne-
 cessary to his *Hypothesis* to suppose this, it being
 evident, that the *Britons*, and after them the *English*
 that always claim'd a *Monarchy*; this Claim was
 quietly submitted to, he confesses, when he
 thought the confession of that truth served a more
 weighty purpose. To perswade the *English* to
 admit the King of *Scots* to the Throne of the *Mo-
 narchy*; he maintains, that no man can say, that
 ever the *Scots* molested the *English* with any Wars,
 as long as the Kingdom of the *English Saxons* lasted,
 as *St Edward* Witnessed in that Statute, and all the
 chief Men of the Kingdom.

He had more discretion than to add, that
 the Statute declares, that the *Scots* were Subjects
 of this Kingdom of *England*, or *Britain*.

As soon after the *Confessor's* Demise, the *English
 Monarchy* was duely translated to another Royal
 Family; the Head of those Successions *W. 1.*
 of Glorious Memory, was fully recognized for
Monarch of the whole Island by the *Scotch* Prince
 and People. This demonstrates that the *Homage*
 done by their King, was for the whole Kingdom,
 which, with *Lodeny* newly comprised in it, he
 owned to have received of King *Wm's* Grant;
 as before the doing *Homage* he agreed to it, in
 Testimony of the Subjection of that Principality to
 the Kingdom of *England*.

That all the *Scots* and *Picts* of *Albany* were
 Subjects to *W. 1.* among whom he was to pre-
 serve the Peace and Justice, and that *Albany*
 was

was part of the *English*, as it had been the *British Monarchy*, his Laws evince, as well as notoriety of fact.

The *Scots* continued not only under the same *Monarch* with the *English*, but under the same *Laws* in *Church* and *State*; had the same *Supream King* and *Archbishop*, in subjection to whom they attended in the same *Councils* both *Civil* and *Ecclesiastical*, and as late as the *Reign of H. 3.* the *Chief Justice of England* was *Chief Justice of Scotland*. As to the *Dependency* of their *Church* upon the *Church of England*, whatsoever right the *Cession of Archbishop Lanfranc* might confer upon the *See of York*; 'tis certain the *Bishops of Scotland*, were to obey the *Summons* of the *Archbishop of Canterbury* to a *National Synod*, or his precepts grounded upon the *Writ of the Monarch of the whole Island*.

The *Superiority* and *Direct Dominion* of the *Crown of England*, over the *Kingdom of Scotland*, *Wm.* by the *Scots* falsely called a *Conqueror*, transmitted to his *Heirs* and *Successors* undiminished. If he were a *Conqueror*, it makes equally against them, since by *England*, with its *Appendages*, he acquired *Scotland*, and the *Saxon Chronicle* is express, that he put *Scotland* under him. One would wonder at *Sir Thomas Craig's* assurance, in telling a formal story of terms forced by their *Malcolm* upon *Wm.* whom he calls the *Conqueror*; after he says *Wm. had possessed England by force of Arms*, and said that all the *Estates in England* belonged to him by the *Right of War or Conquest*. Which is palpable fiction.

In Testimony of the Subjection of the *Scots* to *Chron.* the *Crown of England*, which *W. 1.* maintained, *Sax. p.*

Mal. 191.

Chron:
Sax. p.
198.

Malcolm, upon *Roberi's* waving the Claim of an Heir to his Father, who was not Successor to his Crown, agreed to obey him as *he had done his Father*, and this he confirmed with an Oath, which was *Liege Homage* for the Kingdom; as in the Fathers time it was own'd to be a *Principality* under the Crown of *England*, and was no otherwise the Kingdom of *Scotland*, but as, with *Lodeny*, it had been erected into that Kingdom by the *Confessor*, and confirmed by *W. I.* upon a new *Investiture*.

The original Charter of their *King Edgar*, agreeing with the Authorities not in the least to be suspected, puts this matter beyond all question; and convicts all of wilful blindness, who pretend not to see the *Superiority and Direct Dominion* of this *Imperial Crown*, over that whole *Kingdom*, advanced into the Kingdom of *Scotland*, by the late accession of *Lodeny*: which the present Bishop of *Worcester* holds to be meant for all the *East Low-lands*.

Historical
Account
p. 45.

But I take the *MS* of the division of *Scotland*, which his *Lordship* refers to from *Mr Camben*, to be no sufficient Authority, that *Edinburg* was delivered by the *English* to *Indulph* King of the *Scots*, in the year 920. and *Matthieu* of *Westminster* is too late to prove his *Lordship's* supposal, that the rest of *Loutbien*, or *Landen*, was granted by *King Edgar*.

His *Lordship* does not observe, that the share which the *Scotch MS* pretends to have been given to *Indulph*, falls within *Edgar's* Reign; so that we may well think *Edgar* granted all, which neither of the Authorities import, or none, which the Charter of the *Scotch King Edgar*, and
more

more Ancient History than his *Lordship* cites, make very plain.

Since, therefore, by the grant of *Lodeny*, which had been within the known *English* Bounds, the Kingdom of *Scotland* arose, of which that was made a Constituent part; the denying *Homage* were it only by reason of *Lodeny*, would have been a *Forfeiture* to the Lord of the *Fee*, who erected the whole into the Kingdom of *Scotland*.

Even then, all that now passes for the *Ancient Kingdom* was not in it, particularly *Murray land*; and it may be a question whether *Galloway* was. However, the Territories which came to be within a Kingdom, owing to the Creation or *Investiture* of the *English Monarch*, the *Feudatory Kings* like our *Lords Marchers*, acquired as Subjects of *England*, and much the rather if the Territories were before but parts of *England*, or at least subject to it.

Every new *Investiture* was in the Eye of Law a new Grant of the *Principal Feudal Territory*, with all the then *Members*; accordingly the *Saxon Chronicle* shews, that upon the Death of *Edgar*, who in his Charter acknowledged, that he had the Kingdom of *Scotland*, with *Lodeny*, of the Grant of his Lord *W 2.* our *H. 1.* gave the Kingdom of *Scotland* to *Edgar's* Brother *Alexander*. Chron. Sax. de An. 1107.

As yet the *Scots* had no pretence to any County within the *English Pale*, but the East *Lowlands*. Sir *Thomas Craig* admits, that *Edgar* and his Brother *Alexander* did *Homage* to *H. 1.* but then, he says, it was only for the *Fiduciary Counties* of *Cumberland*, *Westmoreland*, and *Northumberland*. p. 280.

All

All which Counties continuing then in the hands of the *English*, 'tis evident the *Homage* was, and in its own nature must have been, for the Kingdom of *Scotland*; as it had been in the Times of the *Confessor*, *W. 1.* and *W. 2.* when the *Lothians*, and the rest of the Territories belonging to the new Kingdom of *Scotland* at the times of the respective *Investitures*, were received of the Grants of our *Kings*.

Indeed the present *Bishop of Worcester*, tho he with great Judgment, except against the credit of the *Scotch Historians*, yields too much in relation to the supposed *beneficiary Counties*; for besides the Inhabitants of *East Lowlands*, he allows the *Cluidsale Welsh*, the *Cumbrian Britons*, and the *Bernician Saxons*, with the *Picts*, to have been taken into their Body: but pretends not to shew when the *Bernician Saxons* were taken in, which I am well assured he never can; besides, that it opposes his best Authority, *Archbp. Usher*. Neither did his Lordship, as he might, observe the short continuance of the *Cumbrians* under the *Scots*, if they ever were accounted within that Kingdom.

Even in *King Stephen's* time, how much soever he was embarrassed, by a powerful Competition for the Crown of the *Monarchy*, supported by *David* then King of *Scots*, who, among the rest of *H. the 1st's Barons*, had sworn to secure the Succession of it to *King Henry's* Daughter *Maud*, in the *Saxon* called *Ethelie*; yet *King Stephen*, in virtue of his possession of the Crown of *England*, obliged the Nation of the *Scots*, as well as their King, to give Hostages for pledges of their Fidelity: and yet *King David* pretended then to no more in *England* than the Honour of *Hunting-*
son,

*Historical
account,
p. 46, 47.*

*Chron.
Sax. de
An. 1127.*

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son, which he Claimed not in his own Right as King of Scotland; but either in the right of his Wife, or rather from the Grant of *H. 1.* who had given him to Wife *Maud* the Daughter of Earl *Waltbeof*, who before his Forfeiture, had not only the Honour of *Huntingdon*, but the Earldom of all *Northumberland*. Sir *Thomas Craig* indeed, according to his skill in History, says *Maud* the Empress gave *Judith* to *David*, with the Earldom of *Northumberland*: Which, however, is a plain confession, that till then *Northumberland* was in English hands, To the Honour of *Huntingdon*, King *Stephen* added *Doncaster* and *Carlisle*; and whatever other parts of the *Northanbymbrian* Kingdom *David* pressed to have put into Scotch hands, he made no pretence to them as King of Scotland; but demanded them for his Son, upon the weak Title of being Grandson to the Saxon Earl *Waltbeof*, who had been attainted by the Judgment of his Peers.

Whatever advantages *David* might expect from a King, whose Title he question'd and oppos'd; when the objection was removed by the Succellion of *H. 2.* who was glad to come in as adopted Heir to King *Stephen*; Homage for the Kingdom of Scotland, tho it was paid by *Wm.* King of Scots, before he was at full Liberty, was afterwards in a free Parliament of both Nations at *York*, acknowledged to be due: and accordingly the Scotch Nation Swore Allegiance to *H. 2.* as Superior Lord.

Whatever has been pretended of the release of *R. 1.* which, if full in Words, could not have been effectual; 'twas with an exprefs reservation of the Ancient Right of the Crown of England. Tho *H. 3.* had too much upon his Hands from his own People, to exact from his Homager, who might be useful to him in those unhappy Wars,

any more than the *King* of the *Scots* would yield to the force of undeniable precedents; yet *Alexander*, then *King* of *Scots*, by his Charter without respect to any Lands, but what composed his *Feudal Kingdom*, owned himself *King Henry's Liege Man*, and made several of his *Peers* swear to his promise, not to enter into any Alliance without his *Lords* consent. In which he and those *Peers* were far from supposing his *Kingdom* to be *Independant*, or that they lay under any obligation to the pretended League with *Charlemaign*.

After this *Alexander* the Son freely offered *Homage* for *Lodeny*, as a *Tenement* of *England*. But our *King* would not receive this for a full recognition of the due Subjection only, out of tenderness to a young *Prince* and younger *Bridegroom*, resisted doing *Homage* for the *Kingdom*, which the *Records* evinced to be due.

I need not repeat any of the Instances of the Subjection of the *Kingdom* of *Scotland* in the *Reign* of *E. 1.* which I shewed so at large, and which the *Scots* acknowledge, but represent as an *Usurpation* upon their *Ancient Freedom*; and the doing it such a *Breach* of the *Trust* reposed in their *King*, that for this *John Baliol* was deservedly rejected by them. As if they were perfect *Strangers* to the judgment of the *Lord* of the *Fee*, which set him aside; the entire submission of their *Nation*; and those *National Oaths*, which may be thought more plainly, to have involved them in repeated (a) *Perjuries*, than their

(a) *Sir G. M. The Right of the Succession defended*, p. 196. How can we imagin, that the whole *Parliament* would have unanimously drawn upon themselves so dreadful a *Perjury* by excluding the *Lawful Heir* against their *National Oath*, in the *Reign* of *K. Kenneth* the 3d.

their frequent departures from Allegiance fancied to have been Sworn, in pursuance to *Mac. Alpin's* imaginary Laws.

Sir *Thomas Craig* in his pleasant *Romance* concerning *Homage*, says,

' At (b) the inauguration of our Kings, the con- (b) Sir T.
' sent of the King of England was never required, C. of Hom.
' nor was ever the renewal of the Investiture de- p. 418.
' manded from any Successor to the Crown of
' England, but for almost 1000 years, the next of
' the Blood did constantly succeed in a continued
' Series.

We need not here criticize whether he meant the next strictly, or by right of representation, since even Sir *George Mackenzie* does not pretend, that the Successions were constantly either way.

To proceed with Sir *Thomas*.

' *Baliol* was the only Man who ever had Inve- (c) It, 419.
stiture from the King of England.

I cannot but think his Countrymen will now be so ingenuous as to own *Malcolm*, *Edgar*, and several other of their Kings, had *Investiture* from the Crown of England.

But can it be imagined, Sir *Thomas* should be guilty of such inadvertency, as when he had another game in pursuit, to betray the cause of *Homage*, and yield to the force of what clearly proves, the Subjection of the Kingdom of Scotland to the Imperial Crown of England? but 'tis certain he puts the matter upon such an Issue, as gives up the Controversy, no less evidently, than he did in appealing to the Confessor's Laws. His Adversary having, to prove the subjection of the Scots to the Crown of England, alledged that they chose *E. 1.* to be their King, Sir *Thomas* inadvertently says, If he ever finds it in any Writer,

that the Scots acknowledged E. 1. for their King, let him shew it, and so carry his point.

To satisfy his Admirers in this particular, I need refer them only to the Publick Notary, who Recorded the recognitions of the whole Nation; which being so, Sir Thomas has yielded the point to be fully proved.

Tho E. 1. was unworthily succeeded by E. 2. and the prevalence of a corrupt Ministry occasioned such a division in the Kingdom, as the Scots not only fomented, but profited by; the right of the Crown, if not sufficiently vindicated by the Sword, was by legal Judgments. (a) As in the 34th of E. 1. the Land of the Rebel Robert de Brus, Earl of Carric in the Bishoprick of Durham, had been declared Forfeited, upon which it was granted out to Robert Clifford; According to this Precedent E. 2. in the 12th of his Reign, granted to his Son John of Eltham, all the Lands on this side Trent, which came to his Hands, by reason of the enmity of the Scots his Enemies, and Rebels.

Tho the Reign of E. 2. was inglorious, he asserted the Right of his Crown over Scotland as well as he could; and did not lose the Right, but with the Crown itself, which was advantageously taken up by his Son and Successour, E. 3.

He had Homage for the Kingdom of Scotland from Edward Baliol, who was upon every account the rightful King of the Scots; having that right, which Sir Thomas Craig will have to be the only Right by the Law of God, Nature, and Nations; and besides that, having Investiture after the Scots by their Rebellion, and adhering to a

(a) Cart.
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King not so Invested, had lost the privilege of having any *King* from among themselves.

Sir Thomas Craig - in his Treatise of *Homage*, p. 419. says, 'as for *Edward Baliol*, who followed his Fathers example, and Swore *Homage* to the *King of England*, we never acknowledged him for *King*.

Yet having occasion to shew, that *Scotland* was within the Jurisdiction of *England*, and so accounted when the Statute of E. 3. about *Aliens* was made, he says of *Edward Baliol*, he,

'Taking his advantage from the nonage of *King David*, and the Factions of the Scots Nobility entered *Scotland*, having obtained of *Edward King of England* 4000 *English Forces* for his assistance, and gaining a Victory, he took the Crown of the Kingdom.

Thus Sir Thomas owns, that their *Edward Baliol*, who must be agreed to have the best Title, according to the rule contended for, by the strictest Adherers to an invariable right of descent, as he was put into the possession of the Crown, by the appointment and assistance of E. 3. had Investiture from him; and therefore rightfully did *Homage* for his Kingdom.

Sir Thomas shews at large, and very truly, that the King and Parliament of *England* in the Reign of E. 3. were fully satisfied and declared it for the Law of the Kingdom, that *Scotland* was, and ought by all the *English Subjects*, to be taken to be, within the Jurisdiction of *England*; as the Scots and Picts of *Albany*, were by the Laws of the Confessor and W. 1. declaratory of the Fundamental Right of the Kingdom. Is it not therefore strange, that any Modern Pretenders to knowledge in our Antiquities,

ties, should deny this, or hold it a *Paradox* much to be doubted of?

As *Edward Baliol*, then *Lawful* and *Rightful King of Scotland*, did *Homage* for his *Kingdom*; 'tis as plain, that *J. 1* of *Scotland*, under whom the *Illustrious Family* of the *Stewards* derive, an unblemish'd Title, by reason of the Grant and *Investiture* in the Reign of *H. 6.* did the same accustomed *Homage* for that *Kingdom*: if the Imprisonment of their *J. 1.* were any objection against the effect of the *Homage*, it would be equally against the *Seisin* following the *Investiture*.

If it be said, that then from that time, the *Scots* maintained an *independent Kingdom* by force; that cannot reasonably be supposed, because 'twas actually received as a *Fiduciary Kingdom*: and if it were by force, the Right acquired by their *James* the first, according to that notion, and what *Sir Thomas Craig* and others infer from an imagination, that *W. 1.* Conquer'd *England*, was to him and his *Heirs*, purged of all other pretences; and by consequence, when their *J. 6.* came to be King of *England*, he restored the Kingdom of *Scotland* to that *Imperial Crown*, which drew to it all Inheritances, and United them to his Politick Capacity, as *Monarch* of *England* or *Britain*: and the People of *Scotland*, who

* Vid. Rot. claus. 13. E. 3. p. m. 2. Rex de avifamento consilij sui ordinavit quod magnificus Princeps Rex Scotie consanguineus suus carissimus perceperet de Thef. Angl. singulis diebus temp. pacis a festo inventionis sancte crucis 30 Solidos & singulis diebus quando de guerra equitabit 50 Solidos, &c.

who gave not the power over themselves, have nothing to do but to submit to their Duty upon the event.

Here I may ask some of Sir *Thomas's* Questions, only turning the Tables.

'What share of the power had the People of *Scotland*? What Counsel did they give? What 'transferring of power did they make? Or what 'Power, Authority, or Jurisdiction received he 'from the People? Did the People give the 'Kingdom to their *James I.*

That the opposition given by the *Scots* under their *J. I.* and his Successors, to the Right of the Crown of *England*, could not in the least weaken it, is confessed by Sir *Thomas Craig*, *Bishop Lesly*, and all their best Writers; the only dispute which they make, is upon the Foundation and Antiquity of the *Submission* of that People; that they set up here in a state of Dependency, and have continued it for all that they possess within this *Island*, and that the Lands which they have claimed within the *English Pale*, could not be the Ground of the Homage paid by their Kings, and the Allegiance of their Subjects; I cannot but think now past controversy.

Tho the Confession of *Adversaries* is a good Argument to the Men, 'tis not convincing to all, but as the Question is of the *lawful Right* of the *English Crown*; the *English Law* is conclusive upon this subject, and it must be agreed, that this right is of such a nature, as not to be prejudiced by a much longer with drawing of Allegiance than can be pretended with any shadow of Truth: Nor can be lossed till the *English Nation* has parted with it, neither can they give it up, without betraying the Rights of the Crown.

As the Claim is expressly continued by an Act of Parliament, as late as the 35th of H. 8. and virtually by every Coronation Oath, whenever the Prince swears to maintain the Laws of the good *King Edward*; these are no Antiquated Laws, declaring the *right* of the *Crown*, and manifesting the danger of opposing it, as well as it would be treachery to give it up.

That *French Faction*, which spirited away the *Queen of Scots*, when Providence, and the good of the *Protestant Cause* offered them an opportunity of returning to their Subjection to this *Imperial Crown*, without the least seeming diminution of Honour; tho' it has brought many Calamities upon *England*, as it were by God's just Judgment, has been most fatal to the *Scots*.

This occasioned the constant Victories in the Reign of E 6. the advantages of all which the *English*, thro' the influence of that glorious *Confessor*, the then *Duke of Somerset*, would have Sacrificed to the good of the *Protestant Religion*; but no Man can think, that their *Piety* and *Humanity*, lost them all the Fruits of their *Victory*; since they successfully asserted the *Right* of the *Crown of England* to the subjection of that Nation, which nothing but the influence of *France*, and a then *Popish Clergy*, could have kept from discerning its true Glory.

In the 14th of the *Queen*, all the *Judges of England* freed from that *Byass*, or inclination to *Complément*, which appeared 7^o J. 1. rightly held *Homage* then due for the Kingdom of *Scotland*; nor has there been any resolution of *Judges* to the contrary; and if there had been any such, it could not preclude the *Crown* of its Ancient and continued Right; and which, if there

there had been any discontinuance, was restor'd to the Crown in the times of Usurpation, as, indeed, all acquisitions made by the Subjects of an Independent Kingdom, are under the Crown of that Kingdom, and all Dominions so acquired, belong to it. Besides Sir Thomas Craig agrees, that the *Statute of Edward the Confessor*, in affirmance of the Common Law, and declaring the *Scots* to be Subjects of the *English Monarchy*, continued to the time of his writing in full force.

CHAP. XLIII.

An enforcement of what follows from the Proofs and Conclusion upon the whole.

HOmage for the Kingdom of Scotland, and its Dependency upon the Superior Crown of England continuing, their *J. 6.* who had an undoubted Right to the Crown of England from his Father, and to the Crown of the dependant Kingdom from his Mother, being duely recognized King of England, with all its Rights, Members, and Appurtenances; no Lawyer can deny that thereby Scotland was Re-united, and Annexed, to that Crown, which had granted the *Investiture* to their *J. 1.* and his Heirs, whose sole Heir was their *J. 6.* our first.

If they who contend for the *Divine Right* of Succession, in a constant course of Descents to the next in Blood, shall upon that account object against

gainst the force of *Homage* done for the Kingdom by *J. 1. of Scotland*, Son to *Robert the 3d*, either giving credit to the *Scotch Historians*, who make that *Robert* to have been born before *Marriage*, or setting up the Right of *Baliol*, they may consider.

1. That tho the right had duely been adjudg'd to *Baliol* by the *Lord of the Fee*; the *Cession* of the then sole claimant under that Title, and the force in *Scotland*, followed by a deliberate Act of the *States*, bound all the *Scots*, till the dissent of the *Superiour Lord* appeared.

2. Whenever one of the other *Royal Family* received *Investiture*, or did *Homage*, that not only confirmed the choice of the *Scots*; but, as appears by *Glanvil*, the possession upon that *Homage* gave the preferment to the Heir of *Bruce's* Family before the Heir of *Baliol's*.

3. If *Robert the 3d* were born before *Marriage*, yet he dying seised, his Issue were by Law entitled to the Inheritance of the *Crown* before the Issue of *Robert the 2d* by his Wife *Euphem*.

4. This which is a known Rule in private Inheritances, is strengthened by another Rule; as the possession of the *Crown* purges all defects.

5. The with-holding of the *Homage* of the *King*, and the Oaths of *Allegiance* of the *Subjects* of *Scotland*, much more their Acts of *Hostility* before their *J. 1.* did *Homage* for his Kingdom, gave the *Crown of England* a right to have continued the *Fee consolidated*.

Therefore the Grant and *Investiture*, 20 *H. 6.* removed all possible objections against the Title of their *J. 1.*

6. The *Scots* can make no colourable objection against the re-annexation of that Ancient Mem-

Mem-

Member of the *British*, now *English Monarchy*; since they had no right to have a King of their own, till the *Investiture* following the *Homage*; and not only received their King upon those terms, but before hand, upon a solemn Treaty, agreed so to receive him:

Lesley, Craig, and others, who writ for the right of their *James* to the Crown of *England*, own a re-annexation, or at least the Right of the Legal Possessor of the Crown of *England* to that of *Scotland*, to follow in the event which has happened, and cite the Judgment of *King H. 7.* and of his Council accordingly.

To use the words of one, who seems to have been an *English Lawyer*, giving reasons why the rule of *Foreign Birth*, could not prejudice the King of *Scotland's* Right to the Crown of *England*. 'The fifth reason, says he, is the Judgment of *H. 7.* and of his Council concerning this matter. For they being in consultation together, about the Marriage of *Margaret* the King's Eldest Daughter with *J. 4.* at that time King of *Scotland*; some of them moved a doubt, what should ensue, if by chance the King's Issue Male should fail, and the Succession descend to the said *Margaret*, as it now doth.

A Treatise declaring the just Title and Right of J. 6. by Irenicus Philodikius.

'Whereunto the *Wise and Prudent Prince* made answer; that if it so chanced, *England*, being the chief and principal part of the Land, should receive no damage; but rather great advantage, for that it would draw to itself the Kingdom of *Scotland*, as before it had done *Normandy*, and *Aquitain*, with other Provinces. Which answer gave full satisfaction and contentment to the Council.

As

As appears above, *H. 7.* and his Council judged according to the known rule of Law, and the King was Right in his instances of *Normandy*, and *Aquitain*, which no man can reasonably question, after duly considering the Statute of the Kings Prerogative.

And yet, if there might be a question whether Children born in *Normandy*, while the *Normans* paid Allegiance to the Crown of *England* were *Denizens* here, when it may be thought that *Normandy* continued a Fief held of the Crown of *France*; yet there could be no ground of doubt upon the King of *Scotland*'s having that Crown, of which *Scotland* was originally holden.

I may further observe, that a Wise Parliament went upon the same Ground with *H. 7.* and his Council, for 14 *E. 3.* this Charter was passed in Parliament.

Stat. 14.
E. 3.

Edward by the Grace of God, King of *England* and Lord of *Ireland*, to all those which these Letters shall hear or see, greeting, Know ye, that whereas some People do think, that by reason, that the Realm of *France* is devolved to us as a right Heir of the same; and forasmuch as we be King of *France*, our Realm of *England*, should be put in subjection of the King, and of the Realm of *France* in time to come; we having regard to the state of our Realm of *England*; and namely, that it never was, nor ought to be in subjection, nor in the obedience of the Kings of *France*; which for the time have been, nor of the Realm of *France*; And willing to provide for the surety and defence of the Realm of *England*; and of our Liege People of the same, Will and Grant and

Estab-

‘ Establish for us, and for our Heirs and Successors, by assent of the *Prelates, Earls, Barons, and Commons* of our *Realm of England*, in this our present Parliament, &c. The 14th year of our said Reign of our *Realm of England*, and the 1st of *France*; that by the Cause or Colour of that we be King of *France*, and that the said *Realm* to us appertaineth as afore is said, or that we cause us to be named King of *France*, &c. our said *Realm of England*, nor the People of the same of what Estate or Condition they be, shall not in any time to come be put in subjection, nor in obeisance of us, nor of our Heirs and Successors, as Kings of *France*, &c.

Here is a plain admission, that the Successors to the Crown of *England*, tho not Heirs to *E. 1.* would be Kings of *France*; and 'tis evident, they looked upon him as seized only in his *Politic Capacity*; but then some, supposing *France* to be a more honourable Kingdom, or Superior to *England*, this provision to keep *England* as a separate Realm was thought requisite.

But that caution plainly argued their Judgment, that if *England* had been in any respect under *France*, or inferiour to it, the King of *England*, by succeeding to the *French Crown*, would have had *England* in his *Politick Capacity*, as King of *France*.

The *British*, afterwards the *English Monarchy*, having extended over all parts of this *Island*, and particularly over *Albany*, while that was all the Land of the *Scots* here; and over all other Territories, which from time to time have come to the *Scotch Subordinate Crown*; since those Kings de-

derived all their Right from the Grant of the *Crown of England*; the contract upon which they have held it may be considered, either, as made by the Superior *Crown* with the Prince alone, or with him and his People, or else with the People alone.

The last of which need not be touched upon, being wholly inconsistent, not only with the notions of Sir *Thomas Craig* and his *Non Jureing Editors*, but with the nature of the Grant.

If it were with the *King* alone, which is most agreeable to their *Scheme*, then it would be evident, that as a Man cannot contract with himself, he cannot enforce any thing that might look like such a *Contract*; and therefore whatever Grant had been made from the *Crown of England* of a *Kingdom* in *Scotland*, to a Man and his Heirs, still depending upon the *Crown of England*; when by the Heirs having the *Superiour Crown*, the *Contract of Dependency* were dissolved, the very *Kingdom* depending on that contract would cease to be a *Kingdom*.

This would not be the consequence of taking the *Contract* to be with the Prince and People.

To judge of the *Contract* according to the state of Succession to the *Crown of Scotland*, before their *James the 1st* did *Homage* for the *Kingdom*, we may well suppose an agreement with the head of the *regnant Family*, and the People of *Scotland*, that preserving the Right of that *Family* they should be at Liberty, when they had not concluded themselves by Acts of Settlement, to present the most deserving of the *Family* to be constituted *King*, by the *Monarch* of the *Island*.

But

But from the time that their *James the 1st* did *Homage* for himself and his *Heirs*, a strict Rule of descent was to be observed, according to the Law of the *Monarchy*, within which this *Kingdom* was erected: and if by this Rule the *Crown* of *Scotland*, being possessed by the *Heir* of the *Crown* of *England*, returned to the Fountain of that power, whether entirely confounded, or continuing a distinct *Crown*, must be determined by the Law of *England*; which being *Feudal* in relation to all Inheritances, the consequence of this will best appear, when we observe what follows upon *Scotland's* being a *Fief* of the *Crown* of the *Monarchy*.

In pressing the duty of subjection to the Imperial *Crown* of the *British* Island coetaneous with the *Monarchy*, I cannot with equal Judges be thought to entrench upon the Liberties of *Man-kind*, who have greater Benefit and Freedom by submitting to equal constitutions, long established, than they could reasonably propose to themselves by innovations of any kind.

But such a Liberty as is now contended for by them, who set up for *Patriots* in *Scotland*, being contrary to *Gods* Law, requiring Submission to that *Imperial* *Crown*, under which he has placed them, and to their own most valuable Interests, as *Men* and *reformed Christians*; they cannot assume it without Impiety to *God* and their *Country*.

The duty of submitting to the *English* Act of Parliament, which has settled their *Crown*, as it is an *Appendage* to the *Crown* of the *Monarchy*, having appeared from the consideration of that *Kingdom*, as an undoubted Member of the *English*

lish Monarchy, we may next consider their Kings as *Feudal Homagers* for their Kingdom, which they have appeared to be from its first Erection.

As E. 1. claimed, and Authorities of successive Ages evince, the *Kings of England* have been from of old rightfully possessed of the *Superiority* and *Direct Dominion* over the Kingdom of Scotland.

What *Direct Dominion* imports, take Sir Thomas Craig.

Of Suc.
f. 255.

'No man gives a *Fief* but on these Terms, so that it holds of himself, and he retains to himself the property of the *Fief*, that is the *Directum Dominium*, and consequently the *Fief* is as much the *Superiours*, as 'tis the *Vassals*. Scotland then being considered as a *Fief* of the Crown of England.

1. Whatever pretence may be made to an unalterable Right of *Succession* to the Crown of Scotland; the doing *Homage* for that Kingdom to the Lord of the *Fee* was essential to the *Seisin*, and till that was performed, no King of Scotland was a Lawful King.

2. The *Homage* when done, was a plain original Contract, upon the with-holding the Duty imported by which, their Kings losted their *usufructuary Right*, and the *direct Dominion* returned to the Lord of the *Fee*.

3. Whoever of the *Royal Family* had *Investiture* from the Crown of England; he and his Descendants, performing the original Contract, were *Rightful Kings* against all Pretenders whatsoever.

4. If the race of their Kings fail, there's an *Escheat* of the *Fee* to the Superior Lord, the Legal Possessor of the *Imperial Crown*.

5. If

5. If upon the failure of that Family, another is set up, acceptance of *Homage* for the King-^{268.} *dom*, of that new head of Successions; bars the Lord of his *Escheat*, which may be applied to any of the instances where a Successor to *Mac-Alpin*, or one of the *Roytelites*, in the time of *Canute the Dane*, was not of the *Scotch Royal Family*.

6. When, as in the case of our *James the 1st.* of *Scotland* the 6th, the *mesne Lord* has the *Superiour Fee*, as he cannot be a Lord to himself, he has the whole united to the *Superior Seignior*, the usufructuary to the *direct Dominion*.

7. Tho. *Sir Thomas Craig* and others, call this a consolidation of the *Fee*, 'tis strictly only of the *Seigniories*; for the *Tenants* continue their former Properties within the *Fee*, only pay their Services immediately to the *Supream Lord*.

8. A *dependent Kingdom* coming to the *Crown*, is plainly of the nature of an *Honour*; the *Tenants* of which, upon the *Honours* coming to the *Crown*, as was observed above, held not in chief, but of the *King* as *Lord* of that *Honour*.

This is within the reason of a resolution in our Law.

'When a *Privilege*, *Liberty*, *Franchise* or *Jurisdiction*, was at the beginning erected and created by the *King*, there, by the accession of them again they are not extinct, nor the appendance of them severed from the possessions.

Thus *Scotland*, tho it return'd to the *Crown* of *England*, by the Accession of *J. 6.* to the *Imperial Crown* of the *Monarchy*, still continues a King-

Kingdom held of this *Crown*, with the only difference, that as before they had *Kings* of their own; henceforward, unless the *Crown* of *England* duly make some other Provision, whoever is *King* or *Queen* of *England* is, and will be, thereby, *rightful King* or *Queen* of *Scotland*.

9. Here 'tis worth observing, upon what Terms *Sir Thomas Craig* yields *Homage* to be due for the Kingdom of *Scotland*, and what he owns to follow from that right, by the *Feudal Law*.

Among several cases, in either of which he yields all that I contend for, he says, 'If
Str T. C. 'the Kingdom of *Scotland* was ever the *Patri-*
Of Homage 'mony, or under the *Protection* of that which is
p. 62, 63. 'now called the Kingdom of *England*, except it
 'were a long time before the *English Monarchy*
 'had a being; if there were not always War,
 ' &c. and more than *Vatinian* hatred between the
 'two Kingdoms; if the *King* of *Scots* did not
 'assist the *King* of *France* with all his might a-
 'gainst the *King* of *England*, both by sending
 'Auxillaries into *France*, infesting them at
 'home, and provoking them to fight, and al-
 'ways prefer'd the *French King's* Interest to the
 'King of *England's*, even in the greatest of his
 'own difficulties and dangers (which was nei-
 'ther the part of a *Vassal* to his Lord, nor of a
 'Lord to his *Vassal*) if ever the *King* of *Scots* ap-
 'peared at the *King* of *England's* Court or *Parlia-*
 'ment, either to give Advice or receive Judg-
 'ment; if ever any *King* of *Scots* was invested
 'by the *King* of *England*, or desired the renova-
 'tion of the Investiture; or if the consent of
 'the *King* of *England* was ever expected or de-
 'sired

‘fired, at the *inauguration* of our Kings; we shall
 ‘not deny, but that the *Kingdom* of *Scotland* owes
 ‘the *Faalty* of a *Clyent*, and *Homage* to the King
 ‘of *England*, and that the *King* of *Scots* shall be
 ‘accounted his *Liege Vassal*, and *Clyent*, and bound
 ‘to all services as such.

‘But, says he, seeing there were always those
 ‘grudges and hatreds betwixt the Nations, that we
 ‘read of, and that almost without any intermission
 ‘for above 1000 years; what Man who is capa-
 ‘ble of making an equal Judgment, will give it
 ‘as his opinion, that the King of *Scots* owes the
 ‘*Faalty* of a Client to the King of *England*, or
 ‘that he is his *Liege Subject*?

Tho’ he seems to put the issue chiefly upon the
 quarrels between the two Nations, which he will
 here have to continue without intermission, he
 plainly agrees, that any one of the particulars
 are sufficient badges of the *Vassalage* or *Clientary*
State, which he himself has rendred the more
 evident, by putting the cause upon Facts, e-
 very one of which is point blank against him.
 For,

1. The *Confessor’s* Law, which he appeals to
 shews, whatever the *Scots* have within this *Island*
 to be the *Patrimony* of the *Saxons*, as legally suc-
 ceeding the *Britons*.

2. That Law shews, that as by virtue of the
 Constitution establish’d by *King Arthur*, in the
British times, the *Scots* whenever they first settled
 here, were to be *Sworn Brethren* with the rest of
 the Inhabitants of the *Island*, to defend the Person
 of the *Monarch*, and the Rights of the Crown of
 the Kingdom of *Britain*, since of *England*; they
 often acted in the discharge of their Duty, against
 the *Danes* and other Invaders.

Upon second thoughts, Sir *Thomas* has entirely renounced all that he would ground upon the supposed Enmity, and Wars between the two Nations, in these Words.

Of the Succession.

'No Man can say, that ever the *Scots* molested the *English* with any Wars, as long as the Kingdom of the *English Saxons* lasted, as St *Edward* witness'd in that Statute, and the chief Men of the Kingdom.

According to which, by Sir *Thomas* his own confession, *Egbert* the first *English Monarch*, and all his Successors to the time of that Statute, were peaceably possessed of that Superiority and direct Dominion, which the Confessor's Laws shew to be part of the Fundamental Constitution of the Monarchy.

3. As to the confederations with the *French*, the only material question of fact is, whether they were prior or subsequent not only to the *English*, but to the *British Monarchy*. Besides what our *Hystoriographer Mr Rymer* has shewn unanswerably, of their fiction about a League with *Charlemaign*, when they had no Kingdom here, and when, however if they had such a League, it could have had no force, for want of the consent of the *English Monarch*; Sir *Thomas* himself owns, in what I have cited out of his Treatise of the Succession, that the first League must have been since the *Norman Race* succeeded to the Monarchy.

At which time, if there had been no such thing as *Homage*, all Inhabitants within the *Island*, were Subjects owing Allegiance to the Kings of *England*, and such Leagues with *France* entered into by the *Scots*, whenever they first began, were contrary to the Duty of their Allegiance.

4. That

4. That their King *Kenneth* attended in King *Edgar's* Court, *Wm* in *Henry* the 2ds Parliament, and *Baliol* in *E. 1*sts. where he received judgment of deprivation, cannot be deny'd.

5. As to the *Investitures*, suitably to what I shew'd above out of him, he here agrees, the consent of the King of *England* to any inauguration of a King of *Scotland*, to be a sufficient *Investiture*, and not here to mention others, *Malcolm* in the time of the *Confessor*, *Edgar* of *Wm. 2.* and *Alexander* of *H. 1.* had *Investiture* from the Crown of *England*.

These things having appeared beyond possibility of a reasonable doubt, it must be agreed from the nature of the evidence, as well as *Sir Thomas Craig's* confession, that the *Kings* of *Scotland* have been, and of *Right* continued, *Liege Vassals* and *Clients* of the *Kings* of *England*, and *Sir T. C.* were bound to all Services as such; the sum of *Homage* of which Services as he gives it in another place *p. 61.* is, that he is obliged to maintain a sincere and inviolable Fidelity towards his Lord, and when he Swears the same, he performs *Homage*.

Lets then observe from him the consequence of this in two cases.

1. If the *Vassal* joyn with *France* against *England*.

2. If he happen to be King of *England*.

1. In the first case *Sir Thomas* agrees it to be *Perjury*, and if the Nation had joyned in Swearing to the *Chief Lord* of the *Fee*, that such a joyning with the Enemy of *England*, is a *National* *Sir T. C.* *Perjury*: He agrees further, that the *Vassal* is so of *Homage* hazard his own Life for his Lord's in Battle, and if *p. 60, 61.* he forsake his Lord in time of fight, he is deprived of his *Fee*.

Nor is this the utmost that he, when there is
Of the Succession, f. 376. occasion, enforces from the *Feudal Law*: *Dole-*
man had urg'd, that *Blanch* the Daughter of
 the Earl of *Lancaster*, was Sole Heir of that
 Estate; and therefore that *Dutchy* necessarily de-
 volved upon the Children of that Marriage,
 and consequently upon the Kings of *Portu-*
gal.

In answer to which, and to shew how far such
 pretenders are removed from any claim to that
Dutchy, he says,

'Tis known, that the *Dutchy* of *Lancaster* is a
 Fief of *England*, and that no Person has ac-
 knowledged the King of *England* for that Fief,
 or demanded *Investiture* in it from the Superi-
 our these 200 years. So that the Fief returned
 to the Superior; for if the Lord or Superior
 has been in possession of the Fief thirty years on-
 ly, and the Vassal all that while does not de-
 mand the *Investiture*, nor swears *Fealty*, nor
 makes offer of Service to the Lord, according
 to the condition of his Fief, the Fief returns to
 the Lord.

Nay, *ex summo jure* in strictness of Law; if a
 Vassal abstains from demanding the *Investiture*
 one year after the Death of his Predecessor, he
 falls from his Right of the Fief. He agrees, that
 if the Vassal project Hostilities against his Sove-
 reign, he thereby renders himself unworthy
 of enjoying any Fief under him.

Therefore it must not be deny'd, that from
 the time that any Successor of *J. 1. of Scotland*,
 had lapsed his time of taking *Investiture*, much
 more upon open Hostilities against the Crown
 of *England*, the Fee was in strictness of Law re-u-
 nited: nor is any *Laches* imputable to the Crown,
 and

and if there had been any consequence from such neglect, to the prejudice of the *right* of the *Crown*, that acquisition which was made to the *Crown* in the times of *Usurpation*, if it did not continue *Scotland* under the immediate Government of *England*, at least sufficiently asserted the Superiority, and direct Dominion, of the *English Crown*.

The right of which could not be prejudiced by the indulgence of King *Charles* the 2^d, especially if, as some say, the inducement to it was an Act of Parliament promised, and afterwards obtained in *Scotland*, for an Army of 22000 Men to march into *England*, or elsewhere, to attend the Kings Commands.

However, it may be hoped, that a Nation immoderately fond of a mistaken point of *Honour*, may, by yielding to the less harsh consequence of the right of devolution, by their Kings becoming Lord of the *Superiour Fee*, prevent all nice disquisitions, what right may remain in the *Crown* of *England* to a further Subjection, than will follow by a consolidation of the *Fee*, by a Descent and Settlement of both Crowns, and that there may not be the least occasion to urge its having been taken into the hands of the *English*: after a Forfeiture to the *Crown* of the Kingdom, or however, that the right of insisting on the Forfeiture has not been diminished.

Here I may well repeat Sir *Thomas Craig's* objection, against the continuance of the Superiority of the *Crown* of *Britain* over *Albany*, upon the Death of *Brutus's* Son *Albanact*.

'For,' says he, if *Locrinus* had the Superiority of *Albany*, and succeeded *Albanactus*, deceased, it necessarily follows, that the *Liege*

' Fee was extinguished with *Albanactus*, and that
 ' *Albany* returned to the Superiour Lord, *per con-*
 ' *solidationem utilis Dominii cum directo*, by conso-
 ' lidation of the profitable or usufructuary Do-
 ' minion with the *Direct*, as is usual in Vassa-
 ' lages: where the Lord of the *dominant* Estate
 ' succeeds to the Lord of the subordinate, or
 ' as the Creditor succeeds to the Debtor, & *per*
 ' *contra*.

Where the Tenants succeeding to the Lord, is
 agreed to work a *consolidation* of the *Fee*, as well as
 the Lord's succeeding to the Tenant; and by
 consequence, by the accession of *7. 6.* to the
 Crown of which he held his Kingdom of *Scot-*
land, he was as truly seized of the Kingdom
 of *Scotland*, in the Right of the Crown of *Eng-*
land, as the Issue of *Edward* the 6th, and the
Queen of Scots would have been, if the intended
 Marriage, defeated by the *French*, had taken effect.

Consider either the consequence of Hostilities,
 as well as denying *Homage*, or else the point
 more to the Honour of the *Scots*, and which I
 therefore principally insist on, the *devolution* and
consolidation of the subordinate Imperial Crown; it
 follows from what I have shewn, to be the na-
 ture of this *Hereditary Monarchy*, and of the *de-*
pendency of *Scotland*, that her Majesty is by a
Divine Right, seiz'd of the Crowns of *England*
 and *Scotland*, to her and her *Heirs* and *Successors*,
 according to the Act of settling the Crown of
England, with all the Dominions thereto be-
 longing.

It follows further, that they who deny the
 Right of the House of *Hanover*, after her *Maje-*
sty and the *Heirs* of her Body, are not aware of
 the plain import of the *Act of Parliament*, which
 makes

makes it *High Treason* by any overt *Act*, to derogate from that Right to the *Crown of England*, and its Appendages, which is ascertained by the *Act of Settlement*.

This *lawful Authority* is thus become *Gods Ordinance*, which they who resist, ought to fear the severe denunciation of *Judgment*. As I remember, that great Man *Grotius*, in his Treatise of the Truth of the *Christian Religion*, uses it as an undeniable argument of the *Divine Providence*, and interposition in *Humane Affairs*; that whatever form of Government, has obtained in any Nation, is still preserved, notwithstanding all the Plots and Machinations of Men to the contrary.

Grotto de
Veritate
&c.

This may well be applied to the *British Monarchy*, continuing the same under the *English Name*; and they who contend for a *Divine Right*, Antecedent to all *Humane Laws*, and to which they would have all Civil Laws, and Interest Sacrificed, would do well to consider their obligation to the *Divine Law*, arising from the *Civil*, and *inseparable* from it.

Herein lies true Religion, and the true point of Honour; as nothing is more honourable, than to keep to the real obligation of *Oaths*, and those Laws which give them their force, and meaning.

If *Worldly Interest* may be taken into the Scales, still the Interest of *Religion* in the World, ought to have the transcendancy; and therefore it may be hoped, that all who have a just value for the *Protestant Religion*, will close with a consequence of the Right of the *Crown of England* at this time absolutely necessary, for preserving

ing the free profession of the true Religion in this *Island*.

The denying the Right, as it has been heretofore, must now, necessarily be grounded upon *French Counsels*; and must draw on such a force to back it, as cannot but make them masters of *Scotland* at the least.

The dangers of *Confederacies* with *France*, since it has become such an overmatch to any of its Neighbours, by that Naval Force which its Friends in *England* conniv'd at, while they might have crush'd it, is of a far different nature from what it was formerly.

Then they only occasioned just punishments for their Revolts, which they suffered sooner or later, from the *Lord* of the *Fee*; but now that juncture, which should free *Scotland* from its dependency upon the *Imperial Crown* of *England*, must render it a *Member* of *France*.

'Tis obvious, that there can be no *medium*. As Men of Honour, the *Scots* in this may remember how, for the good of the *Protestant Religion*, the *English* Nation would have quitted all the advantages their Arms had given them in a just War, to have laid all disputes about Punctilioes of Honour, by a Marriage between the *Lord* of the *Fee* and his *Vassal*; and how upon the same commendable ground, they admitted the King of *Scots* to the *Crown* of *England*, tho in the judgment of all former Ages, and by the *fundamental Right* of the *Monarchy*, till they had made recognition of the right of *King James*, they were at liberty to have made some other Election, within the *Royal Family*.

If sense of Honour may not prevail, unless a considerable Interest be tacked to it ; I must recommend to their consideration, whether if they shall not receive the Successor to the *English Crown*, they can with any Justice retain *Lodeny*, which they never gained from *England* by the Sword ; but by free gift, in confidence of their continuing in due Subjection to this *Imperial Crown*. And I may ask them, who condemn my assertion of the Right of my Country, whether it will become *Englishmen* to give up, not only the point of the dependency of *Scotland*, but the right to *Lodeny*, tho the continuing consideration of it be with-held.

If to considerations pressing upon all in general, it may be allowable to add any thing relating only to particular Persons ; I may add, that if after her present Majesty should, to the unspeakable loss of her Subjects, resign her *Earthly* for an *immarcessible Crown of Glory*, the *Scots* should go about to withdraw their *Allegiance* from the Successor to the *Crown of England*, and set up a Prince of their own, as in an *Independant Kingdom* ; from that time all who shall be born in *Scotland*, according to the Statute of the Kings *Prerogative*, declaratory of the *Common Law*, and the case of them who were born in *Normandy*, after it was under the *Allegiance of France*, would be *Aliens* in *England*, and Lands which otherwise might have descended to them, would *Escheat* to the *Crown*.

Duke Hamilton, for instance, who has near 4000 l. a year with the Daughter and Heir of the Lord Gerard of Bromley, might chance to have an Heir to his Dukedom, who would not inherit a foot of Land in *England*.

As

As I am far from designing any reflection upon the *Scotch Nation* ; I am zealous for every point of their real Honour : and Hope, that by a timely Act of *recognition*, they may prevent the urging that consequence of the *Homage*, in advertising them of which, I cannot but think, I serve them, as well as my more immediate Country.

f. 419.

I should hope Sir *Thomas Craig's* confession may weigh with them ; ' we own, says he, that ' sometimes we were the first in taking Arms, but ' to our great loss and hurt, and that we also occasioned the Wars while we were entangled with ' Foreign Leagues, or rather madnesses, we neglected minding what was just, what was profitable, ' for some small present advantages. But we expiated those faults with our own Blood, and paid such punishments, as moved compassion in our Enemies ; as in that overthrow which we had at ' *Pinsie*, at a time when that so often wished for ' Union was almost finished. We were almost ' mad at that time, having been stirred up by the ' Preachings and Threats of the Priests and furious ' Monks, who reckoned that they were undone, ' should Scotland also have agreed with England ' in matters of Religion: For England at that ' time had made some alterations in Religion, ' overturned the *Monasteries*, and renounced the Pope.

These were the causes which then hinder'd the Coalition of both Nations into one, as was greatly wished for by them both ; and altho' God sometimes punishes the Sins of both People by Wars, yet he chastises them the more severely, who gave the occasion of War, and most commonly Victory attends the justest cause.

Set-

Setting aside the force of preconceiv'd opinions however taken up, and contempt of Information from a hand, of which low or hard thoughts may have been entertained; I cannot think my endeavours can fail of good effect with any, but the *Nonjurors* in both Kingdoms.

They will be sure to represent me an Enemy to the *Divine Right* of Monarchy, and Succession to it, while they are contending for a right opposite to the *Divine* and truly *Antichristian*, but I establish the right upon the foundation, on which God has placed it, not only by his *Providence*, but by his *Law*, in which I am well assured, I duely avoid the two extremes of *Anarchy*, and *Tyranny*.

If those *Gentlemen*, who would be thought, out of Conscience, to promote an *universal Monarchy*, under which they would put their *Prince* by *Divine Right*; without the *Legal*, did not shew more Art than Honesty, in the Controversies which they manage; they would not think it enough to baffle men of their own avow'd Principles, who rather than be thought fallible in what they have taught as *Sacred Doctrines*, are content to be accounted ill *Logicians*, in concluding contrary to their *Premises*. Contempt of Authorities in Law, upon a question of *Legal Rights*, can never pass for an evidence of sincerity. The most subtle of *Dean Sherlock's* opposers, knowing the advantage given by an admission, as if the *Settlement* of the *Crown* upon the late happy *Revolution* were by *Usurpation*, rightly says, *Humane Laws* do declare and determine what is right, and the *Law of God* does establish, and confirm the *Law of Man* about it.

Before which he had said, it is a contradiction to the very nature of Law, to say it cannot be a clear and safe rule of Obedience.

Since Sec. p. 12.

Since, therefore, the question of the right of Succession to the *Monarchy* is a matter of Law; they who have recogniz'd the *Right*, and *Abjur'd* the pretence of any, who does not claim under the *Act of Settlement*, till they quit those *Premises* which make the *Nonjurors* Triumph in their *Logical conclusions*; may suffer a mean hand to take the spoils from the Enemy, and to convince the World, that Men may truly come in to the present Government, and maintain the *Settlement* to which they have Sworn, without the least imputation of *Perjury*, or *Temporizing*.

As our Saviour said of his Doctrines, that they who did the Will of his Father, would know they were from God; they whose ill practices do not Byass them against the Right of the Government, will easily discern, that I serve them with seasonable truths, in relation to the Succession to both Crowns, and obedience to that *Monarchy*, under which the two Nations have been for many Ages.

Both of them have renounced a fancy'd Right by the Law of God, Nature and Nations, antecedent to Humane Laws, and not to be limited by them.

Tho' the Scots have not gone so far, as the consideration not only of Right, but Honour, and Safety, might have carried them; they have put a limitation upon the Successor, requiring that the Person should be a Protestant, and their Lords and Commons went further in agreeing, that it should not be the Successor to the Crown of England, without conditions not likely to be obtained in the manner proposed.

I cannot but think, that the Interest which they have, in securing the most valuable blessing, will put all the sincere Protestants of that Kingdom,

dom upon receiving without any prejudice, the only visible means to so desirable an end. The Wise and the honest of both Nations have seen, that an *Union* between them would be the firm Basis of their mutual happiness: but that principle of *Union*, which *Nature*, and the *Fundamental Laws*, and therein *God* himself, have laid, has long been disregarded.

If a struggle continue as between two *Independent Crowns*, each will be labouring to draw advantages to itself: but if all parts are considered as *Members* of that *Monarchy*, under which *God* has placed them; every one in his station will, if he attend to his duty, pursue the good of the whole: And those methods, by which amity was reciprocally cultivated, and all were *Sworn Brethren*, to preserve the Person of the *Monarch*, and the dignities of the *Imperial Crown*, in the *Folebmotes* on the first of *May*, or other *Assemblies* on the confines of both *Kingdoms*, may be happily revived and improved.

If the *Danes*, a weak and merciful Enemy, in comparison with the *French*, occasioned the frequent cementing this Union, in the times of the *Saxons*, by repeated Oaths of *Fidelity* to the *English Monarchs*, and chearful fighting under their Banners; as, before the *Saxons*, found the several parts of the *Island* acting under the *British Monarchs*; Is *France* now less formidable than either *Saxons*, or *Danes*, or its favour to be courted, to make the *Members* give Law to the head?

If I am too Sanguine in my hopes, that my representation of the Rights of the Crown of *England*, may tend to the Conviction of the generality of the *Scotch Nation*, who are not too deeply engaged with *France*; I cannot but prosecute
it

it with my wishes, as I have in these my sincere endeavours for the service of both Kingdoms.

As to four different States, which are all that can be propos'd to the choice of the Nation of *Scots*, honest men can't be much divided.

1. A total separation from *England*, upon a dissolution of Government; with which *French Emissaries* flatter a few hot headed *Republicans*.

2. A joynt Commonwealth between *England* and *Scotland*; which vain *Chymera* could hardly enter into any sober Man's head, how much soever *French Money* may gild any such project.

3. A *King*, as far as there is consistency in the notions of *Sir George Mackenzy*, *Sir Thomas Craig*, and others, who by the Law of God, Nature, and *Sir G. M's Nations*, derives a title to a *Monarchy*, which can justly be never be limited by the People, and consequently, as *Monarchy*. themselves infer, must be absolute.

4. That *Monarch* which God Almighty has appointed them, in ratifying the Law of Man, which has settled the *Crown* of *England*, with all its *Rights*, *Members* and *Appurtenances*, and among them *Scotland*, upon her present Majesty, her Heirs and *Suecessors*.

This, to which God requires subjection, works no change in the state of *Scotland*; and if her Majesty's pious disposition, and endeavours to promote the Interest of the *Protestant Religion*, and the good of all her People, meet not with a due return from her Subjects of both *Kingdoms*, it must be laid at their doors, who, with a false pretence of Zeal for her Majesty's Service, would by attempts against the *Protestant Succession*, leave her most desirable Life exposed to every *Bigot*, who may expect to merit *Heaven*, or *Secular Preferment*, by making way for a *Popish Successor*, and *French Government*.

F I N I S.

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